

CHAPTER 2
RULES OF CRIMINAL PROCEDURE

INDICTABLE OFFENSES

Rule 2.1 Scope of rules. The rules in this section provide procedures applicable to indictable offenses. Unless the context indicates otherwise, rights or obligations of a defendant's attorney also apply to an unrepresented defendant.

Rule 2.2 Proceedings before the magistrate.

2.2(1) Definitions. For purposes of this section, "magistrate" includes judicial magistrates, district associate judges, and district judges.

2.2(2) Initial appearance of defendant. An officer making an arrest with or without a warrant shall take the arrested person before a magistrate either personally or by interactive audiovisual system as provided by rule 2.27 within 24 hours unless no magistrate is available and in all events within 48 hours.

a. When a person arrested without a warrant is brought before a magistrate, a complaint shall be filed forthwith.

b. If the defendant received a citation or was arrested without a warrant, the magistrate shall, prior to further proceedings in the case, make an initial, preliminary determination from the complaint or affidavits filed with the complaint whether there is probable cause to believe that an offense has been committed and that the defendant has committed it. The magistrate's decision in this regard shall be entered in the record.

c. Unless otherwise ordered by the court, a defendant may waive initial appearance by executing and filing a written waiver that substantially complies with rule 2.37—Form 8: *Waiver of Initial Appearance for Indictable Offense*. Thereafter, the date of initial appearance is deemed the date the waiver is filed.

2.2(3) Events to occur at the initial appearance. The defendant shall not be called upon to plead at the initial appearance. The following events shall occur:

a. The magistrate shall inform the defendant of the complaint and ensure the defendant receives a copy of it.

b. The magistrate shall inform the defendant of the following:

(1) The defendant's right to retain counsel.

1 (2) The defendant's right to request the appointment of counsel if the
2 defendant is unable to obtain counsel by reason of indigency.

3 (3) The circumstances under which the defendant may secure pretrial
4 release.

5 (4) The defendant's right to obtain review of any conditions imposed on the
6 defendant's release.

7 (5) That the defendant is not required to make a statement and that any
8 statement made by the defendant may be used against the defendant.

9 (6) The defendant's right to a preliminary hearing.

10 c. If the defendant is found to be indigent pursuant to Iowa Code section
11 815.9, the magistrate shall appoint counsel.

12 d. The magistrate shall order the defendant held to answer in further
13 proceedings.

14 e. If the defendant does not waive the preliminary hearing, the magistrate
15 shall schedule a preliminary hearing and inform the defendant of the date of
16 the preliminary hearing. Such hearing shall be held within a reasonable time
17 but in any event no later than 10 days following the initial appearance if the
18 defendant is in custody and no later than 20 days if the defendant is not in
19 custody. Upon showing of good cause, the time limits specified in this
20 paragraph may be extended by the magistrate.

21 **2.2(4) Preliminary hearing.**

22 a. *Method of proceeding.* The prosecution shall present evidence at the
23 preliminary hearing. The defendant may cross-examine witnesses and may
24 introduce evidence on the defendant's behalf.

25 b. *Probable cause finding.* If from the evidence it appears that there is
26 probable cause to believe that an offense has been committed and that the
27 defendant committed it, the magistrate shall order the defendant held to
28 answer in further proceedings. The finding of probable cause shall be based
29 upon substantial evidence, which may be hearsay in whole or in part provided
30 there is a substantial basis for believing the source of the hearsay to be
31 credible and for believing that there is a factual basis for the information
32 furnished.

33 c. *Constitutional objections.* Rules excluding evidence on the ground that it
34 was acquired by unlawful means and motions to suppress are not applicable to
35 the preliminary hearing.

1 *d. Discharge of defendant.* If from the evidence it appears that there is no
2 probable cause to believe that an offense has been committed or that the
3 defendant committed it, the magistrate shall dismiss the complaint and
4 discharge the defendant. Unless the dismissed charge was a serious
5 misdemeanor, the discharge of the defendant shall not preclude the
6 government from instituting a subsequent prosecution for the same charge.

7 *e. Preliminary hearing testimony preserved by stenographer or electronic*
8 *recording equipment; production prior to trial.* Proceedings at the preliminary
9 hearing shall be reported by a court reporter or recorded by electronic
10 recording equipment and the recording or transcript shall be made available to
11 the defendant, defense counsel, or the government on request. Prepayment for
12 transcripts shall be required except for an indigent defendant.

13
14 **Rule 2.3 The grand jury.**

15 **2.3(1)** *Drawing grand jurors.* At such times as prescribed by the chief judge
16 of the district court, the grand jurors shall be drawn using the methods
17 authorized by rule 2.18 for random selection of prospective petit jurors. A
18 grand jury shall have seven jurors. If any jurors so drawn are excused by the
19 court or fail to attend on the day designated for their appearance, the clerk
20 shall draw additional names until seven grand jurors are secured.

21 **2.3(2)** *Convening the grand jury.* The grand jury shall meet at times specified
22 by order of a district judge, at the request of the prosecuting attorney, or upon
23 the request of a majority of the grand jurors.

24 **2.3(3)** *Challenge to grand jury.*

25 *a. Challenge to grand jury.* The grand jury may be challenged upon any
26 ground set forth in rule 2.18(4). If the challenge is sustained, the court shall
27 take remedial action to select a proper grand jury.

28 *b. Challenge to individual jurors.* A challenge to an individual grand juror
29 may be made upon any ground in rule 2.18(5) except for rule 2.18(5)(g).

30 *c. Timing of challenges.* Challenges to the grand jury or to an individual
31 grand juror must be made and decided, if possible, before the grand jury is
32 sworn.

33 *d. Motion to dismiss.* Where the grounds for the challenge could not have
34 been raised earlier, a defendant may file a motion to dismiss the indictment
35 based on a challenge to the grand jury or to an individual grand juror.

1 **2.3(4) *Excusing and discharging grand jurors.***

2 *a. Excusing jurors.* If the court excuses a juror, the court may impanel
3 another person in place of the juror excused. If the grand jury has been
4 reduced to fewer than seven, the additional jurors required to fill the panel
5 shall be summoned first from the grand jurors originally summoned who were
6 not previously impaneled. If those jurors have been exhausted, the additional
7 number required shall be drawn from the grand jury list.

8 *b. Discharging jurors.* The grand jury shall be discharged by order of the
9 district court at the request of the prosecuting attorney. The regular term of a
10 grand jury should not normally exceed one calendar year. However, when an
11 investigation undertaken by the grand jury is incomplete, the court may extend
12 the grand jury's service to the completion of the investigation.

13 **2.3(5) *Duties of grand jury.*** The grand jury shall inquire into all indictable
14 offenses brought before it which may be tried within the county, and present
15 them to the court by indictment. The grand jury has the special duty to inquire
16 into:

17 *a.* The case of any person imprisoned in the detention facilities of the county
18 on a criminal charge and not indicted.

19 *b.* The condition and management of the public prisons, county institutions,
20 and places of detention within the county.

21 *c.* The unlawful misconduct in office of public officers and employees in the
22 county.

23 **2.3(6) *Oaths and procedure***

24 *a. Foreperson.* The court shall appoint a foreperson and, if desired, an
25 assistant foreperson from among the grand jurors. When the foreperson or
26 assistant foreperson already appointed becomes unable to complete his or her
27 service before the grand jury is finally discharged, a substitute foreperson or
28 assistant foreperson shall be appointed. The foreperson or assistant foreperson
29 of the grand jury shall administer the oath to all witnesses produced and
30 examined before it.

31 *b. Clerks and court reporters.* The court may appoint a competent person
32 who is not a member of the grand jury as clerk. In addition, the court may
33 appoint assistant clerks of the grand jury who are not members. If the court
34 makes no such appointments, the grand jury shall appoint as its clerk a
35 member who is not its foreperson. The court may appoint a court reporter to

1 record the grand jury proceedings. The court reporter may serve as clerk of the
2 grand jury.

3 *c. Oaths administered.*

4 (1) The following oath shall be administered to the grand jury: “Do each of
5 you solemnly swear or affirm that you will, to the best of your ability, diligently
6 inquire and make a true presentment or indictment of all public offenses
7 against the people of this state committed or triable within this county; that
8 you will maintain the secrecy of the proceedings now before you; that you will
9 indict no person through malice, hatred, bias or ill will, nor fail to indict
10 because of fear, favor, affection, or hope of reward; but, rather, that you will
11 base your decision solely upon the evidence before you and in accordance with
12 the laws of this state?”

13 (2) The following oath shall be administered to any clerk, assistant clerk,
14 court reporter, or court attendant appointed by the court: “Do you solemnly
15 swear or affirm that you will faithfully and impartially perform the duties of
16 your office, that you will not reveal to anyone the grand jury’s proceedings or
17 the testimony given before it and you will not express any opinion concerning
18 any question before the grand jury, to the grand jury, or in the presence of the
19 grand jury or any member thereof?”

20 (3) The foreperson or assistant foreperson shall administer the following
21 oath to all witnesses called to testify: “Do you swear or affirm, under penalty of
22 perjury, that you will tell the truth, the whole truth, and nothing but the truth
23 and that you will keep secret all that you say, hear, and see while in this grand
24 jury room?”

25 *d. Secrecy of proceedings.*

26 (1) Except where specific provisions require otherwise, grand jury
27 proceedings remain confidential. Every grand juror, and any clerk, assistant
28 clerk, court reporter or court attendant shall keep secret the proceedings of the
29 grand jury and any testimony given before it. If an indictment is found, no
30 person shall disclose that fact except when necessary for the issuance and
31 execution of a warrant or summons. The duty of nondisclosure shall continue
32 until the indicted person has been arrested.

33 (2) The prosecuting attorney may appear before the grand jury to give
34 information or examine witnesses, and the grand jury may at all reasonable
35 times ask the advice of the prosecuting attorney or the court.

1 (3) When the grand jury is deliberating on whether to find an indictment,
2 only members of the grand jury shall be present. The prosecuting attorney, any
3 clerk, assistant clerk, court reporter, court attendant or any other persons are
4 barred from the grand jury's deliberations.

5 (4) No grand juror shall be questioned for anything the grand juror said or
6 any vote the grand juror cast in the grand jury relating to a matter legally
7 pending before it, except in a case of perjury against the grand juror.

8 (5) The court or any legislative committee duly authorized to inquire into the
9 conduct or acts of any state officer that might be the basis for impeachment
10 proceedings may require the disclosure of a witness's grand jury testimony
11 when necessary in the administration of justice.

12 *e. Securing witnesses and records.*

13 (1) The clerk of the court shall issue subpoenas, including subpoenas duces
14 tecum, for witnesses to appear before the grand jury, as requested by the
15 foreperson of the grand jury or the prosecuting attorney.

16 (2) The grand jury is entitled to free access, at all reasonable times, to
17 county institutions and places of confinement and to the examination, without
18 charge, of all public records within the county.

19 *f. Reporting.* All grand jury proceedings shall be stenographically reported or
20 electronically recorded, except for the votes of individual members on finding
21 an indictment.

22 *g. Evidence for subject of investigation.* The grand jury is not bound to
23 receive evidence from a person who is the subject of investigation, but may do
24 so, and must weigh all the evidence before it. When at least three grand jurors
25 have reason to believe other evidence is available that they wish to have
26 submitted, they may order its submission. If submitted, such evidence shall be
27 considered by the grand jury in deciding whether an indictment should be
28 found.

29 *h. Refusal of witness to testify.* When a witness under examination refuses
30 to testify or to answer a question, the grand jury shall proceed with the witness
31 before a district judge, and the foreperson shall repeat the question and the
32 refusal of the witness. If the court finds that the witness is bound to testify or
33 answer the question, the court shall inquire whether the witness persists in
34 refusing and, if the witness does, the court shall proceed with the witness as in
35 cases of similar refusal in open court.

1 *i. Finding an indictment.* An indictment should be found when all the
2 evidence, taken together, is such that, if unexplained, it would warrant a
3 conviction by the trial jury; otherwise, an indictment shall not be found. An
4 indictment must be based only upon testimony given by witnesses sworn and
5 examined before the grand jury, and other evidence received by the grand jury.
6 A grand jury may consider testimony previously heard by the same or another
7 grand jury. In any case, a grand jury may take additional testimony.

8 *j. Vote necessary.* An indictment cannot be found without the concurrence
9 of five grand jurors. Every indictment must be endorsed a true bill and the
10 endorsement signed by the foreperson.

11 *k. Effect of refusal to indict.* If the grand jury refuses to return an indictment,
12 all materials shall be returned to the clerk, with the foreperson's signed
13 endorsement that the charge has been declined. If a subject of investigation
14 was in custody, the district judge shall enter an order which requires the
15 subject to be released and, if applicable, bond to be exonerated. Upon request
16 of the prosecuting attorney, and for good cause shown, the district court may
17 direct that the charge be resubmitted to the same or a subsequent grand jury.

18 *l. Appearance not required.* A child under the age of ten years shall not be
19 required to personally appear before a grand jury to testify against a relative or
20 another person with whom the child resides or has resided during any period of
21 the grand jury's investigation, unless the court enters an order finding that the
22 interests of justice require the child's appearance and that the child will not be
23 disproportionately traumatized by the appearance.
24

25 **Rule 2.4 Indictment.**

26 **2.4(1) Defined.** An indictment is an accusation in writing, found and
27 presented by a grand jury legally impaneled and sworn to the court in which it
28 is impaneled, charging that the person named therein has committed a public
29 offense.

30 **2.4(2) Use of indictment.** Offenses other than simple misdemeanors may be
31 prosecuted to final judgment either on indictment or on information as
32 provided in rule 2.5.

33 **2.4(3) Presentation and filing.** An indictment, when found by the grand jury
34 and properly endorsed, shall be presented to the court. The presentation shall
35 be made by the foreperson of the grand jury in the presence of the other
36 members of the grand jury. The prosecuting attorney shall prepare and present

1 minutes of testimony as provided in rule 2.4(6) by the time of arraignment. The
2 indictment, minutes of testimony, and all exhibits relating thereto shall be filed
3 by the court.

4 **2.4(4) Contents of indictment.** An indictment shall contain a plain, concise,
5 and definite statement of the offense charged. It shall be signed by the
6 foreperson of the grand jury. It shall substantially comply with the form that
7 accompanies these rules. The indictment shall include the following:

8 a. The name of the accused, if known, and if not known, designation of the
9 accused by any name by which the accused may be identified.

10 b. The name of the offense and the statutory provision or provisions alleged
11 to have been violated.

12 c. A brief statement of the time or place of the offense if known.

13 d. Where the means by which the offense is committed are necessary to
14 charge an offense, a brief statement of the acts or omissions by which the
15 offense is alleged to have been committed.

16 **2.4(5) Nonprejudicial defects in indictments.** A trial judgment or other
17 proceeding shall not be affected by any defect in the indictment that does not
18 prejudice a substantial right of the defendant.

19 **2.4(6) Minutes.**

20 a. *Contents.* A minute of testimony shall consist of a notice in writing stating
21 the name and occupation of the witness upon whose testimony the indictment
22 is found, a full and fair statement of the witness's testimony before the grand
23 jury if such witness testified, and a full and fair statement of expected
24 testimony at trial. Disclosure of addresses shall be governed by rule 2.11(12).

25 b. *Copy to defense.* Such minutes of testimony shall be available only to the
26 judge, the prosecuting attorney, the defendant, and the defendant's counsel.

27 **2.4(7) Amendment.**

28 a. *Generally.* The court may, either before or during the trial, order the
29 indictment or minutes amended.

30 b. *Opportunity to resist proposed amendment.* The defendant shall be given a
31 reasonable opportunity to resist any proposed amendment.

32 c. *When amendment not allowed.* Amendment is not allowed if substantial
33 rights of the defendant are prejudiced by the amendment, or if a wholly new
34 and different offense is charged.

1 *d. Continuance.* When an amendment is allowed, no continuance or delay in
2 trial shall be granted on that ground unless the defendant should have
3 additional time to prepare.
4

5 **Rule 2.5 Information.**

6 **2.5(1)** *Informations, in general.*

7 *a. Prosecution on information.* All indictable offenses may be prosecuted by a
8 trial information and supporting minutes of testimony. An information
9 charging a person with an indictable offense may be filed at any time, whether
10 or not the grand jury is in session.

11 *b. Submitting the information to the court.* Any prosecuting attorney has the
12 authority to submit an information to the court for filing unless that authority
13 is specifically reserved to the attorney general

14 **2.5(2)** *Endorsement.* An information shall be endorsed “a true information”
15 and shall be signed by the prosecuting attorney.

16 **2.5(3)** *Witness names and minutes.* With the information, the prosecuting
17 attorney shall submit the minutes of testimony. The minutes shall state the
18 name and occupation of each witness upon whose expected testimony the
19 information is based and a full and fair statement of the witness’ expected
20 testimony. Disclosure of addresses shall be governed by rule 2.11(12).

21 **2.5(4)** *Approval by judge.*

22 *a.* A district judge, or a district associate judge having jurisdiction of the
23 offense, shall determine if the minutes supporting the information, if
24 unexplained, would warrant a conviction by the trial jury. If so, the judge shall
25 promptly approve and file the information.

26 *b.* If not approved, the charge may be presented to the grand jury for
27 consideration.

28 *c.* At any time after judicial approval of an information, and prior to the
29 commencement of trial, the court, on its own motion, may order the
30 information set aside and the charge submitted to the grand jury.

31 *d.* If the judge attempts to file an information but the document is returned
32 by the Iowa Judicial Branch electronic document management system, the date
33 and time of the corrected filing shall relate back to the date and time of the
34 judge’s attempted filing.

35 **2.5(5)** *Indictment rules applicable.* All provisions of these rules applying to
36 prosecutions on indictments also apply to informations, except where otherwise

provided by statute or by these rules, or when the context requires otherwise. Without limiting the foregoing, rules 2.4(4) and 2.4(7) shall apply to trial informations.

2.5(6) *Investigation by prosecuting attorney.*

a. The clerk of the district court, on written application of the prosecuting attorney and approval of the court, shall issue subpoenas, including subpoenas duces tecum, for such witnesses as the prosecuting attorney may require in investigating an offense.

b. In such subpoenas the clerk shall direct the appearance of said witnesses before the prosecuting attorney at a specified time and place. In lieu of a witness's personal appearance, the subpoena may direct the witness to produce materials at a specified time and place.

c. The prosecuting attorney shall have the authority to administer oaths to said witnesses. The witness shall be subject to the same obligations as if subpoenaed before a grand jury.

d. The application and judicial order for any subpoena shall be maintained by the clerk in a confidential file until a charge is filed, in which event disclosure shall be made to the defendant, unless the court, in an in camera hearing, orders that the application and order be kept confidential.

Rule 2.6 Multiple offenses or defendants; pleading special matters.

2.6(1) *Multiple offenses.* Two or more offenses that arise from the same transaction or occurrence, or from two or more transactions or occurrences constituting parts of a common scheme or plan, may be alleged and prosecuted as separate counts in a single indictment unless, for good cause shown, the trial court determines otherwise. Where a charged offense has lesser included offenses, the latter shall not be charged. The defendant may be convicted of either the offense charged or an included offense, but not both.

2.6(2) *Charging multiple defendants.*

a. *Multiple defendants.* Two or more defendants may be charged in the same indictment if they are alleged to have participated in the same act or the same transaction or occurrence out of which the offense or offenses arose. Such defendants may be charged in one or more counts together or separately, and all the defendants need not be charged in each count.

b. *Prosecution and judgment.* When two or more defendants are jointly charged, each shall be charged in a separate numbered case with a notation in

1 the indictment of the number or numbers of the other cases. Those defendants
2 shall be tried jointly unless on motion of a defendant, the court determines that
3 prejudice will result to one of the parties. Otherwise, defendants shall be tried
4 separately. When jointly tried, defendants shall be adjudged separately on each
5 count.

6 **COMMENT:** The changes to the existing rule on charging multiple defendants are not intended
7 to modify existing law.

8 **2.6(3) *Allegations of prior convictions.*** If the defendant will be subject to an
9 increased penalty because of prior convictions, the prior convictions shall be
10 alleged in the indictment. When the indictment is read or presented to the jury,
11 there shall be no mention, directly or indirectly, of the prior convictions before
12 conviction of the current offense.

13 **2.6(4) *Other enhancements.*** If the offense charged is one for which the
14 defendant, if convicted, will be subject by reason of the Iowa Code to a greater
15 minimum or maximum sentence because of some fact, such as use of a
16 dangerous weapon, the allegation of such fact shall be contained in the
17 indictment. If the allegation is supported by substantial evidence, the court
18 shall submit to the jury a special interrogatory concerning this matter, as
19 provided in rule 2.22(3).

20 **2.6(5) *Pleading statutes.*** A pleading asserting any statute of another state,
21 territory, or jurisdiction of the United States, or a right derived from such
22 statute, must reference the statute with a common citation form. The court
23 may judicially notice the statute.

24 **Rule 2.7 Warrants and summonses.**

25 **2.7(1) *Issuance.*** Upon the request of the prosecuting attorney, the court
26 shall issue a summons or warrant for each defendant named in the indictment
27 who has not previously been held to answer. Where the defendant has
28 previously been held to answer but the indictment has added new charges, the
29 court may upon request of the prosecuting attorney issue a summons or
30 warrant.

31 **2.7(2) *Form.***

32 *a. Warrant.* The warrant shall be signed by the judge, describe the offense
33 charged in the indictment, and command that the defendant be arrested and
34 brought before the court. The amount of bail or other conditions of release may
35

be fixed by the court and endorsed on the warrant. The warrant shall substantially comply with the form that accompanies these rules.

b. Summons. The summons shall be in the form described in Iowa Code section 804.2, except that it shall be signed by the clerk of court. A summons to a corporation shall be in the form prescribed in Iowa Code section 807.5.

2.7(3) Execution; service; return.

a. Execution or service. The warrant shall be executed or the summons served as provided in Iowa Code chapter 804. With respect to an incarcerated person, the court may enter an order directing that such person be produced before it for trial. The sheriff shall execute such order by serving a copy thereof on the warden or other individual having authority over such accused person in custody, and thereupon such person shall be delivered to such sheriff and conveyed to the place of trial.

b. Return. The officer executing a warrant or the person to whom a summons was delivered for service shall make return of the warrant.

2.7(4) Forfeiture of bail; warrant of arrest. If the defendant has been released and does not appear when a personal appearance is necessary, the court may direct the clerk to issue a warrant for the defendant's arrest and, if appropriate, order the forfeiture of bail.

Rule 2.8 Arraignment and plea.

2.8(1) Conduct of arraignment.

a. Arraignment shall be conducted as soon as practicable following the filing of the indictment. If the defendant appears for arraignment without counsel, the court must inform the defendant of the right to counsel and ask if the defendant desires counsel. If the defendant desires counsel, and is unable by reason of indigency to employ any, the court must appoint defense counsel.

b. The defendant shall be given a copy of the indictment and accompanying minutes of testimony before being called upon to plead.

c. Arraignment shall consist of reading the indictment to the defendant or, if the defendant waives reading, stating to the defendant the substance of the charge and calling on the defendant to enter a plea.

d. The defendant must inform the court whether the name shown in the indictment is the defendant's true and correct name. If the defendant gives no other name, the defendant is thereafter precluded from objecting to the indictment on the ground of being improperly named.

1 e. Unless otherwise ordered by the court, a defendant may waive formal
2 arraignment and enter a plea of not guilty by executing and filing a written
3 arraignment that substantially complies with rule 2.37 — Form 6: *Written*
4 *Arraignment and Plea of Not Guilty*. If a written arraignment is used, the date of
5 arraignment is deemed the date the written arraignment is filed.

6 **2.8(2) Pleas to the indictment.**

7 a. *In general.* A defendant may plead guilty, not guilty, or former conviction
8 or acquittal. If the defendant fails or refuses to enter a plea at arraignment, or
9 if the court refuses to accept a guilty plea, the court shall enter a plea of not
10 guilty. A plea of not guilty does not waive any right to challenge the indictment.

11 b. *Pleas of guilty.* The court may refuse to accept a guilty plea, and shall not
12 accept a guilty plea without establishing that the plea is made voluntarily and
13 intelligently and has a factual basis; and addressing the defendant personally
14 in open court and informing the defendant of, and establishing that the
15 defendant understands, the following:

16 (1) The elements of the offense to which the plea is offered.

17 (2) The statutory maximum and minimum penalties for the offense to which
18 the plea is offered. For purposes of this rule, penalties include incarceration,
19 fines, surcharges, and any other punitive consequences of the conviction.

20 (3) That a criminal conviction, deferred judgment, or deferred sentence may
21 affect a defendant's status under federal immigration laws. The court shall
22 inform the defendant that if the defendant is not a citizen of the United States,
23 the effects may include deportation, inability to reenter the United States,
24 mandatory detention in immigration custody, ineligibility for release on bond
25 during immigration proceedings, and increased penalties for unauthorized
26 reentry into the United States.

27 (4) That the defendant has the right to a trial by jury; at trial; the defendant
28 is presumed innocent and cannot be convicted unless the State establishes
29 guilt beyond a reasonable doubt to the unanimous agreement of a twelve
30 person jury; and the defendant has the right to assistance of counsel, the right
31 to confront and cross-examine witnesses, the right not to be compelled to
32 incriminate oneself, and the right to present witnesses and to have compulsory
33 process in securing their attendance.

34 (5) That by pleading guilty the defendant waives all trial rights and there will
35 not be a trial of any kind.

(6) That if the defendant pleads guilty (and the offense is not a class “A” felony), no appeal may be taken unless there is good cause for the appeal.

COMMENT: *Alford* pleas are permitted, so long as the plea meets the requirements of this rule. See *North Carolina v. Alford*, 400 U.S. 25, 37–8 (1970).

(7) The court shall also inquire as to whether the defendant’s willingness to plead guilty results from prior discussions between the prosecuting attorney and the defendant or the defendant’s attorney. The terms of any plea agreement shall be disclosed of record as provided in rule 2.10(2). Subject to rule 2.10(3), the court shall inform the defendant that the court is not bound by any party’s recommendation as to sentence and that the court will determine sentence at the time of judgment. If the defendant persists in the guilty plea and it is accepted by the court, the defendant shall not have the right to withdraw the plea later on the ground that the court did not follow the plea agreement.

c. Manner and method of plea colloquy. The defendant shall be placed under oath for the guilty plea colloquy provided by rule 2.8(2)(b). The court shall question the defendant and, if necessary, may allow either counsel to question the defendant.

d. Challenging pleas of guilty. The court shall inform the defendant:

(1) That any challenges to a guilty plea based on alleged defects in the plea proceedings must be raised in a timely motion in arrest of judgment.

(2) Of the time period for filing a motion in arrest of judgment.

(3) That failure to raise such challenges in a motion in arrest of judgment shall preclude the right to assert them.

e. Immediate sentencing. Upon request of the defendant and agreement of the state, the court may proceed directly to judgment and sentencing if the defendant waives all of the following:

(1) The right to file a motion in arrest of judgment.

(2) The use of a presentence investigation.

(3) The allotted time period before entry of judgment.

2.8(3) Record of proceedings. A stenographic record of all plea colloquies shall be made.

2.8(4) Pleas of guilty to serious or aggravated misdemeanors. With the court’s approval, the defendant may waive the personal colloquy in open court in a guilty plea to a serious or aggravated misdemeanor. In such event, the defendant must sign a written document that:

1 a. Demonstrates the defendant has been informed of and understands the
2 matters set forth in rule 2.8(2)(b)(1)–(7).

3 b. Discloses and acknowledges the terms of any plea agreement, which shall
4 also be acknowledged by the state.

5 c. Informs the defendant that any challenges to the guilty plea based on
6 alleged defects in the plea proceedings must be raised in a motion in arrest of
7 judgment and that failure to raise such challenges precludes the right to assert
8 them on appeal.

9
10 **Rule 2.9 Trial assignments.** Within five days after the entry of a plea of not
11 guilty, the court shall, by written order, set the date and time for trial.
12 However, if the defendant waives speedy trial at arraignment, the court may
13 hold a case management conference within 30 days, at which the date and
14 time for trial and deadlines for filing motions and taking depositions will be set.

15
16 **Rule 2.10 Plea bargaining.**

17 **2.10(1) *In general.*** The prosecuting attorney and the defendant’s attorney
18 may engage in discussions toward reaching a plea agreement, i.e., an
19 agreement that the defendant will plead guilty to one or more offenses in return
20 for one or more concessions by the state.

21 **2.10(2) *Advising court of agreement.*** If a plea agreement has been reached
22 by the parties, the court shall require the disclosure of the terms of the
23 agreement in open court at the time the plea is offered. If the plea agreement is
24 in writing the agreement shall be provided to the court and made a part of the
25 record. All parties shall acknowledge the agreement either in writing or in open
26 court on the record.

27 **2.10(3) *Plea agreements conditioned upon court acceptance.*** If the plea
28 agreement is conditioned upon the court’s approval of a sentencing agreement
29 between the parties, the court may accept or reject the plea agreement, or may
30 defer its decision to accept or reject the plea agreement until receipt of a
31 presentence investigation.

32 a. *Acceptance of conditional plea agreement.* When the plea agreement is
33 conditioned upon court approval of a sentencing agreement, and the court
34 accepts the sentencing agreement, at or before the time the plea is accepted,
35 the court shall inform the defendant that it will adopt the disposition provided
36 for in the agreement or another disposition more favorable to the defendant.

1 ***b. Rejection of conditional plea agreement.***

2 (1) When the plea agreement is conditioned upon court approval of a
3 sentencing agreement, and the court determines it will reject the sentencing
4 agreement, the court shall inform the parties of this fact and afford the
5 defendant an opportunity to withdraw the plea. If the court defers its decision
6 to accept or reject the plea agreement and later decides to reject the plea
7 agreement after receiving the presentence investigation, the court shall likewise
8 afford the defendant the opportunity to withdraw the plea.

9 (2) If the court rejects the plea agreement, the court shall also advise the
10 defendant that if the guilty plea continues, the disposition of the case may be
11 less favorable to the defendant than that contemplated by the plea agreement.
12 If the defendant persists in the guilty plea and it is accepted by the court, the
13 defendant shall not have the right to withdraw the plea later on the ground
14 that the court did not follow the plea agreement.

15 **2.10(4) *Inadmissibility of plea discussions.*** If plea discussions do not result
16 in a guilty plea or if a guilty plea is not accepted or is withdrawn, or if judgment
17 on a guilty plea is reversed on direct or collateral review, the content of any
18 plea discussions and, any resulting plea agreement, plea, or judgment shall be
19 inadmissible in any proceeding except as provided in Iowa R. Evid. 5.410.
20

21 **Rule 2.11 Pleadings and motions.**

22 **2.11(1) *Pleadings and motions.*** Pleadings in criminal proceedings shall be
23 the indictment and the pleas entered pursuant to rule 2.8. Defenses and
24 objections raised before trial shall be raised by motion.

25 **2.11(2) *Motions.*** An application to the court for an order shall be by motion.
26 A motion other than one made during a trial or hearing shall be in writing
27 unless the court permits it to be made orally. It shall state the grounds upon
28 which it is made and shall set forth the relief or order sought.

29 **2.11(3) *Service of motions, orders and papers.*** Service and filing of written
30 motions, notices, orders, and other similar papers shall be in the manner
31 provided by chapter 16 of the Iowa Rules of Court.

32 **2.11(4) *Pretrial motions.*** Any defense, objection, or request that is capable of
33 determination before trial may be raised prior to trial by motion. The following
34 must be raised prior to trial:

35 *a.* Defenses and objections based on defects in the institution of the
36 prosecution.

1 **b.** Defenses and objections based on defects in the indictment other than
2 lack of jurisdiction in the court or failure to charge an offense.

3 **c.** Motions to suppress illegally obtained evidence pursuant to rule 2.12.

4 **d.** Requests for discovery.

5 **e.** Requests for a severance of charges or defendants.

6 **f.** Motions for change of venue.

7 **g.** Motions in limine.

8 **h.** Motions for separate interpreters.

9 **i.** Objections to enhancements based on prior convictions other than that
10 the defendant was not the person convicted, or that the defendant was not
11 represented and did not waive counsel.

12 **2.11(5) *Effect of failure to raise defenses or objections.*** Failure of the
13 defendant to timely raise defenses or objections or to make requests that must
14 be made prior to trial under this rule shall constitute waiver thereof, but the
15 court, for good cause shown, may grant relief from such waiver.

16 **2.11(6) *Time of filing.*** Pretrial motions, except motions in limine, shall be
17 filed when the grounds therefor reasonably appear but no later than 40 days
18 after arraignment. Motions in limine shall be filed when grounds therefor
19 reasonably appear but no later than nine days before the trial date. On request
20 of a party, the court may establish different deadlines for filing motions.

21 **2.11(7) *Dismissing indictment or information.***

22 **a. *In general.*** A motion to dismiss the indictment or information may be
23 made on the ground that the matters stated do not constitute the offense
24 charged, that a prosecution for that offense is barred by the statute of
25 limitations, or that the prosecution is barred by some other legal or
26 constitutional ground. If the court concludes that the motion is meritorious, it
27 shall dismiss the indictment or information unless the prosecuting attorney
28 furnishes an amendment that cures the defect.

29 **b. *Indictment.*** A motion to dismiss the indictment may also be made on one
30 or more of the following grounds:

31 (1) When the indictment has not been presented and marked “filed” as
32 prescribed.

33 (2) When any person other than the grand jurors was present before the
34 grand jury when the question was taken upon the finding of the indictment.

1 (3) When any person other than the grand jurors was present before the
2 grand jury during the investigation of the charge, except as required or
3 permitted by law.

4 (4) When the grand jury was not selected, impaneled, or sworn as prescribed
5 by law.

6 *c. Information.* A motion to dismiss the information may also be made on
7 one or more of the following grounds:

8 (1) When the minutes of testimony have not been filed with the information.

9 (2) When the information has not been filed in the manner required by law.

10 (3) When the information has not been approved as required under rule
11 2.5(4).

12 **2.11(8) *Effect of determination.*** If the court grants a motion based on a
13 defect in the institution of the prosecution or in the indictment, it may also
14 order that a defendant be continue to be held in custody or that the
15 defendant's bail be continued for a specified period pending the filing of a new
16 indictment, or the amendment of any such pleading if the defect is subject to
17 correction by amendment. The new information or indictment must be filed
18 within 20 days of the dismissal of the original indictment. The 90-day period
19 under rule 2.33(2)(b) for bringing a defendant to trial shall commence anew
20 with the filing of the new indictment.

21 **2.11(9) *Ruling on motion.*** A pretrial motion shall be determined without
22 unreasonable delay. Where factual issues are involved in determining a motion,
23 the court shall state its essential findings on the record.

24 **2.11(10) *Motion for change of venue.*** If a motion for change of venue is filed
25 and the court finds there is a substantial likelihood a fair and impartial trial
26 cannot be preserved with a jury selected from the county where trial is to be
27 held, the court shall order that the action be transferred to another county in
28 which that condition does not exist.

29 *a.* When a motion for change of venue is granted, the prosecution shall
30 continue in the county where the action is transferred. If the defendant is in
31 custody, the court may order the defendant to be delivered to the sheriff of the
32 receiving county.

33 *b.* All expenses attendant upon the change of venue and trial, including the
34 costs of keeping the defendant, may be recovered by the receiving county from
35 the transferring county. The prosecuting attorney in the transferring county is
36 responsible for prosecution in the receiving county.

1 **2.11(11) Defense notices.**

2 *a. Alibi.* A defendant who intends to offer evidence of an alibi defense shall
3 file written notice of such intention within the time provided for pretrial
4 motions.

5 (1) The notice shall specify the place or places at which the defendant claims
6 to have been at the time of the alleged offense and the names of the witnesses
7 upon whom the defendant intends to rely to establish such alibi.

8 (2) In response, the prosecuting attorney shall, within ten days of the
9 defendant's notice or within such other time as the court may direct, file
10 written notice of the names of the witnesses the state proposes to offer in
11 rebuttal to the defendant's alibi.

12 (3) The notice of alibi and any rebuttal notice shall include witness
13 addresses that conform to rules 2.11(12) and 2.13(2).

14 *b. Insanity or diminished responsibility.*

15 (1) *Notice of Defense.* If a defendant intends to rely upon either the defense
16 of insanity or the defense of diminished responsibility, the defendant shall file
17 written notice of such intention within the time provided for filing pretrial
18 motions. The court may for good cause shown allow late filing of the notice or
19 grant additional time to the parties to prepare for trial or make other orders as
20 appropriate.

21 (2) *State's right to expert examination.* When a defendant intends to rely on
22 an expert witness or witnesses for the defense of insanity or diminished
23 responsibility, the defendant shall, within the time provided for filing pretrial
24 motions, file written notice of the name of each such witness. Upon the
25 prosecuting attorney's application in response, if a defendant's expert has
26 examined the defendant, the court may order the examination of the defendant
27 by a state-named expert or experts whose names shall be disclosed to the
28 defendant prior to examination.

29 *c. Examination of the defendant for purposes of other defenses.* If a
30 defendant's expert has examined the defendant for a reason other than
31 insanity or diminished capacity and is expected to testify at trial, the defendant
32 shall, within the time for filing pretrial motions, file written notice of the name
33 of the expert and the reason for examination. Upon the prosecuting attorney's
34 application in response, the court may order the examination of the defendant
35 by a state-named expert for the same purpose. The name of the state's expert
36 shall be disclosed to the defendant prior to examination.

1 *d. Affirmative defenses.* If defendant intends to rely upon an affirmative
2 defense of intoxication by drugs or alcohol, entrapment, justification, necessity,
3 duress, mistake, prescription drugs, or other affirmative defense, the defendant
4 shall, within the time for filing pretrial motions, file written notice of intention
5 as to each such defense.

6 *e. Failure to comply.* If a party fails to abide by the deadlines in this rule,
7 such party may not offer evidence on the issue without leave of court for good
8 cause shown. In granting leave, the court may impose terms and conditions
9 including a delay or continuance of trial. The right of a defendant to give
10 evidence of alibi, insanity, diminished responsibility, or any affirmative defense
11 in the defendant's own testimony is not limited by this rule.

12 **2.11(12)** *State's duty to disclose witnesses.*

13 *a. Duty to disclose addresses of law enforcement, governmental, and licensed*
14 *professional witnesses.* In the minutes of testimony, the state shall provide the
15 defense with a written list of the known employment addresses of the following
16 persons who are expected to testify in their official or professional capacity
17 during the state's case in chief: sworn peace officers; federal, state, local and
18 municipal employees and elected officials; and licensed professionals.

19 *b. Duty to disclose addresses of other witnesses.* In the minutes of
20 testimony, the state shall provide the defense with a written list of the known
21 residential and employment addresses of the other witnesses who are expected
22 to testify during the state's case in chief.

23 *c. Grounds for withholding address.* If the state contends disclosure of any
24 address would result in substantial risk to any person of physical harm,
25 intimidation, bribery, economic reprisal, coercion, or undue invasion of privacy,
26 the state may withhold disclosure and shall inform the defendant's attorney of
27 the basis of the nondisclosure.

28 *d. Disclosure of address withheld by the state.* If the state withholds
29 disclosure of an address, the defendant's attorney may request in writing the
30 disclosure of residential or alternative addresses for investigative purposes or
31 to ensure service of a subpoena.

32 (1) Within five days of receipt of the request, the state shall confer with the
33 defendant's attorney and provide the requested information to the defendant's
34 attorney or seek a protective order from the court. The court may deny, defer,
35 or otherwise restrict disclosure to the defendant's attorney if the state proves
36 the disclosure would result in substantial risk to any person of physical harm,

1 intimidation, bribery, economic reprisal, coercion, or undue invasion of privacy
2 that outweighs any usefulness of the disclosure to the defendant's attorney.

3 (2) In establishing the usefulness of the disclosure to the defendant's
4 attorney, the defendant's attorney may provide the court with a written
5 statement to be reviewed by the court in camera. The written statement shall
6 not be served on the state, but shall be made a part of the file, placed under
7 seal, and not subject to disclosure absent further order of a court.

8 (3) If the court denies the defendant's attorney's request, the court may
9 enter an order allowing the defendant's attorney an opportunity to meet with
10 any witness who is willing to talk to the defendant in an environment that
11 provides for the protection of the witness. The court shall also enter an order
12 facilitating the defendant's attorney's ability to serve a subpoena on the witness
13 for deposition or trial.

14 *e. Further disclosure of address by the defendant's attorney.* Any address
15 disclosed by the state in the minutes of testimony may be disclosed by the
16 attorney to the defendant, persons employed by the attorney, persons
17 appointed by the court to assist in the preparation of a defendant's case, or any
18 other person if the disclosure is required for preparation of the defendant's
19 case. An attorney shall inform persons provided this information that further
20 dissemination of the information, except as provided by court order, is
21 prohibited. A willful violation of this rule by the defendant, an attorney,
22 persons employed by an attorney, persons appointed by the court, or other
23 persons authorized by the court to receive the address is subject to
24 punishment by contempt.

25 *f. Continuing duty to update.* The state has a continuing duty to inform the
26 opposing party of any change in the last known residential address or
27 employment address of any witness that the state intends to call during its
28 case in chief as soon as practicable after the state obtains that information.

29 *g. Interference with witnesses.* The defendant, attorneys representing the
30 defendant or the state, and their representatives and agents shall not instruct
31 or advise persons, except the defendant, having relevant information that they
32 should refrain from discussing the case with opposing counsel or an
33 unrepresented defendant or from showing opposing counsel or an
34 unrepresented defendant any relevant evidence. The defendant, attorneys
35 representing the defendant or the state, and their representatives and agents

1 shall not otherwise impede investigation of the case by opposing counsel or an
2 unrepresented defendant. See Iowa Court Rules 32:3.4(a) and (f).

3 *h. Service of subpoenas.* The most recent address provided by the state for a
4 witness shall be the authorized address where the witness can be served,
5 except when the defendant's attorney has reason to believe that the address is
6 not accurate for that witness at the time of service, or the person in fact no
7 longer works or resides at that address.

8
9 **Rule 2.12 Suppression of unlawfully obtained evidence.**

10 **2.12(1)** *Motion to suppress evidence.* A person aggrieved by an unlawful
11 search, seizure, interrogation, or other unlawfully obtained evidence may move
12 to suppress for use as evidence anything so obtained. The court shall receive
13 evidence on any issue of fact necessary to the decision of the motion. The
14 motion shall be made as provided in rules 2.11(4)–(6).

15 **2.12(2)** *Discretionary review of interlocutory order.* Any party aggrieved by an
16 interlocutory order affecting the suppression of evidence, except in simple
17 misdemeanors, may apply for discretionary review of the order in advance of
18 trial.

19 **2.12(3)** *Effect of failure to file.* Failure to file a timely motion to suppress
20 evidence waives the objection that the evidence was unlawfully obtained,
21 unless good cause is shown for a later filing.

22
23 **Rule 2.13 Depositions.**

24 **2.13(1)** *By defendant.*

25 *a.* A defendant in a criminal case may depose all witnesses listed by the
26 state in the minutes of testimony in the same manner, with the same effect,
27 and with the same limitations, as in civil actions except as otherwise provided
28 by statute and these rules.

29 *b.* Before indictment, depositions may be taken only with leave of court.

30 **2.13(2)** *Reciprocal disclosure of witnesses.*

31 *a.* At or before the taking of any deposition by a defendant, the defendant
32 shall file a written list of the names and addresses of all witnesses expected to
33 be called for the defense except the defendant and surrebuttal witnesses.

34 *b.* The defendant shall have a continuing duty before and throughout trial
35 promptly to disclose additional defense witnesses.

1 c. If the defendant has taken depositions and does not disclose to the
2 prosecuting attorney all of the defense witnesses, except the defendant and
3 surrebuttal witnesses, at least nine days before trial, the court may order the
4 defendant to permit the discovery of such witnesses, grant a continuance, or
5 enter such other order as it deems just under the circumstances. The court
6 may, if it finds that no less severe remedy is adequate to protect the state from
7 undue prejudice, order the exclusion of the testimony of any such witnesses.

8 d. The state may depose any witness listed by the defense.

9 **2.13(3) *Objections to depositions.*** If either party objects to the taking of a
10 deposition, the court shall determine whether discovery of the witness is
11 necessary in the interest of justice and shall allow or disallow the deposition.

12 **COMMENT:** The earlier rule recognized only two objections to depositions – that the witness
13 was a foundation witness and that the witness had been adequately examined at the
14 preliminary hearing. This change is intended to allow for other objections in addition to those.

15 **2.13(4) *Time of taking.*** If the defendant does not waive speedy trial,
16 depositions shall be taken within 30 days after arraignment unless this
17 deadline is extended by the court. If the defendant waives speedy trial,
18 depositions shall be taken at least 30 days before trial unless the court orders
19 otherwise.

20 **2.13(5) *Presence of Defendant.*** In felony cases, the defendant is required to
21 be personally present at all depositions. If the identity of the defendant is at
22 issue and the defendant makes a timely motion, the court may allow the
23 defendant to be absent during the part of the deposition when the parties
24 question an eyewitness concerning the identity of the perpetrator of the crime.
25 In that event, all parties shall complete their examination of the eyewitness
26 regarding identity before the defendant is required to be present.

27 **2.13(6) *Special circumstances.***

28 a. *Perpetuation of testimony where a witness will be unavailable at trial.*
29 Whenever the interests of justice make necessary the taking of the deposition
30 of a prospective witness for use at trial, the court may, upon motion of a party
31 and notice to the other parties, order that the deposition be taken and that any
32 designated materials, not privileged, be produced at the same time and place.
33 This provision is available even if the moving party is the only party intending
34 to call the prospective witness at trial.

35 b. *Continuation of the prosecuting attorney's investigation.* After a complaint
36 or indictment has been filed, the prosecuting attorney may continue to

1 subpoena witnesses, and utilize subpoenas duces tecum, as provided in rule
2 2.5(6). However, the defendant shall receive notice through EDMS and if a
3 witness appears, the defendant shall have the opportunity to appear, cross-
4 examine the witness, and review materials produced by the witness.

5 *c. Minors.* To protect a minor from trauma caused by testifying in the
6 physical presence of the defendant where it would impair the minor's ability to
7 communicate, the court may, upon motion of a party and notice to the other
8 parties, order that the deposition of the minor be taken as follows.

9 (1) Only the judge, parties, counsel, persons necessary to record the
10 deposition, and any person whose presence, in the opinion of the court, would
11 contribute to the welfare and wellbeing of the minor, may be present in the
12 room with the minor during the minor's deposition.

13 (2) The court may require a party be confined to an adjacent room or behind
14 a screen or mirror that permits the party to see and hear the minor during the
15 minor's deposition, but does not allow the minor to see or hear the party.
16 However, if a party is so confined, the court shall take measures to ensure that
17 the party and counsel can confer during the deposition and shall inform the
18 minor that the party can see and hear the minor during deposition.

19 (3) As an alternative to (2), the court may require a party to attend the
20 deposition by a live audiovisual connection. In such case, the court shall
21 likewise take measures to ensure that the party and counsel can confer during
22 the deposition and shall inform the minor that the party can see and hear the
23 minor during deposition.

24 **2.13(7)** *Perpetuating testimony before a case is filed.* A person expecting to
25 be a party to a criminal prosecution may perpetuate testimony in the person's
26 favor in the same manner and with like effect as may be done in expectation of
27 a civil action. *See Iowa R. Civ. P. 1.721–1.728.*

28
29 **Rule 2.14 Discovery.**

30 **2.14(1)** *Disclosure of evidence by the state upon defense request or motion.*

31 *a. Disclosure required upon request.*

32 (1) Upon a filed pretrial request by the defendant, the prosecuting attorney
33 shall permit the defendant to inspect and copy:

34 1. Any relevant written or recorded statements made by the defendant,
35 within the possession, custody, or control of the prosecuting attorney or

1 investigating law enforcement agency, unless those statements were included
2 with the minutes of testimony accompanying the indictment or information.

3 2. The substance of any oral statement made by the defendant, which the
4 state intends to offer in evidence at the trial, including any record of same.

5 3. The transcript or record of testimony of the defendant before a grand
6 jury.

7 (2) When two or more defendants are jointly charged, upon the filed request
8 of any defendant, the prosecuting attorney shall permit the defendant to
9 inspect and copy any written or recorded statements and the substance of any
10 oral statements of a codefendant that the state intends to offer in evidence at
11 trial.

12 (3) Upon the filed request of the defendant, the state shall permit the
13 defendant to inspect a copy of defendant's prior criminal record, if any.

14 *b. Discretionary discovery.*

15 Upon motion of the defendant, the court may order the prosecuting attorney
16 to permit the defendant to inspect, copy, and photograph, and, where
17 appropriate, subject to scientific tests:

18 (1) Items seized by the state in connection with the alleged crime.

19 (2) Any results or reports of physical or mental examinations and scientific
20 tests or experiments made in connection with the particular case, within the
21 possession, custody, or control of the state.

22 (3) Writings recordings, photographs, or tangible objects within the
23 possession, custody, or control of the prosecuting attorney or investigating law
24 enforcement agency, which are material to the preparation of the defense, or
25 are intended for use by the state as evidence at the trial, or were obtained from
26 or belong to the defendant. This includes the transcript or record of any grand
27 jury testimony given by a witness who is expected to testify in the government's
28 case in chief.

29 **2.14(2)** *Disclosure of evidence by the defendant.*

30 If the court grants the relief sought by the defendant under rule 2.14(1)(b),
31 the defendant shall have a duty to permit the state to inspect and copy:

32 *a.* Writings recordings, photographs, or tangible objects, including
33 statements other than those of the defendant that are not privileged and are
34 within the possession, custody, or control of the defendant, and which the
35 defendant intends to introduce in evidence at trial.

1 *b.* Any results or reports of physical or mental examinations and scientific
2 tests or experiments made in connection with the particular case, within the
3 possession or control of the defendant, which the defendant intends to
4 introduce in evidence at the trial, or which were prepared by a witness whom
5 the defendant intends to call at the trial when such results or reports relate to
6 the witness's testimony.

7 **2.14(3)** *Continuing duty to disclose.* If following the issuance of an order
8 under this rule, a party discovers additional evidence or decides to use
9 additional evidence that would be subject to discovery under the same order,
10 the party shall promptly disclose the evidence to the other party.

11 **2.14(4)** *Regulation of discovery.*

12 *a. Protective orders.* For good cause shown, the court may order the
13 discovery or inspection be denied, restricted, or deferred, or make such other
14 order as is appropriate.

15 *b. Failure to comply.* If a party fails to comply with this rule or with an order
16 issued pursuant to this rule, the court may, upon timely application, order
17 such party to permit the discovery or inspection, grant a continuance, prohibit
18 the party from introducing any evidence not disclosed, or enter such other
19 order as it deems just under the circumstances.

20
21 **Rule 2.15 Subpoenas.**

22 **2.15(1)** *For witnesses.* The clerk of court in any pending criminal action
23 shall issue deposition or trial subpoenas for witnesses, signed by the clerk and
24 with the seal of the court, and make them available to the defendant's attorney
25 or the prosecuting attorney.

26 **2.15(2)** *For production of documents.* A subpoena may direct the witness to
27 bring with the witness any documents, electronically stored information, or
28 other things under the witness's control that the witness is bound by law to
29 produce as evidence. The court on motion may dismiss or modify the subpoena
30 if compliance would be unreasonable or oppressive.

31 **2.15(3)** *Service.* A subpoena may be served in any part of the state by any
32 adult person not a party thereto.

33 *a.* A peace officer must serve without delay in the peace officer's county or
34 city any subpoena delivered to the peace officer for service and make a written
35 return stating the time, place, and manner of service.

1 **b.** When service is made by a person other than a peace officer, proof thereof
2 shall be made by affidavit, which shall be filed in the court and shall include
3 the time, place, and manner of service and the name of the person served.

4 **c.** Service upon an adult witness is made by personally delivering a copy of
5 the subpoena to the witness.

6 **d.** Service may be by electronic mail or other electronic means with the
7 consent of the person or entity being served. Proof of service shall be filed with
8 the court.

9 **e.** Service upon a minor witness shall be as provided for personal service of
10 an original notice in a civil case pursuant to Iowa Rule of Civil Procedure
11 1.305(2).

12 **f.** Any subpoena must comply with Iowa Code section 622.10, if applicable.

13 **2.15(4) Sanctions for refusing to appear or testify.** Disobedience to a
14 subpoena, or refusal to be sworn or to answer as a witness, may be punished
15 by the court as contempt. The attendance of a witness who so fails to appear
16 may be compelled by warrant.

17
18 **Rule 2.16 Pretrial conference.**

19 **2.16(1) When held.** The court may order all parties to appear for a
20 conference to consider such matters as will promote a fair and expeditious
21 trial.

22 **2.16(2) Subjects of the conference.** The conference may cover such matters
23 as amendment of pleadings, agreements as to the introduction of evidence,
24 submission of requested jury instructions, and any other matters that may
25 facilitate trial.

26 **2.16(3) Stipulations and orders.** The court shall enter an order reciting any
27 action taken at the conference.

28 **2.16(4) Orders on written agreement.** Nothing in this rule shall prevent the
29 district court from entering orders without a hearing on written stipulation of
30 the parties.

31
32 **Rule 2.17 Trial by jury or court.**

33 **2.17(1) Trial by jury.** Cases required to be tried by jury shall be so tried
34 unless the defendant voluntarily and intelligently waives a jury trial in open
35 court and on the record. Any waiver of a jury trial must occur at least 10 days

1 prior to trial, unless the prosecuting attorney consents. The defendant may not
2 withdraw waiver of a jury trial without court approval.

3 **2.17(2) Trial on the minutes.**

4 *a. Generally.* In a case where the parties agree to a trial on the minutes of
5 testimony, the court shall render a verdict without a jury based on the
6 previously filed minutes and any other material that the parties have agreed
7 should be included in the trial record.

8 *b. Jury waiver required.* Before commencing a trial on the minutes the court
9 shall personally address the defendant and ensure the defendant has duly
10 waived the right to a jury trial in open court and on the record.

11 *c. Additional colloquy required.* The court shall further address the
12 defendant personally and in open court and inform the defendant of the
13 following:

14 (1) That the determination of guilt or innocence will be based only upon the
15 minutes of testimony filed by the state and any other materials the parties have
16 agreed to be included.

17 (2) That the defendant will not have the right to call any witnesses on the
18 defendant's behalf including the defendant.

19 (3) That the defendant is giving up the rights to cross-examine the state's
20 witnesses and to object to any evidence set forth in the minutes or any other
21 materials the parties have agreed to be included.

22 **2.17(3) Findings.** In a case tried without a jury, the court shall find the facts
23 specially, separately state its conclusions of law, and render an appropriate
24 verdict in open court and on the record. The defendant may waive in advance
25 the right to receive the verdict in open court.

26
27 **Rule 2.18 Juries.**

28 **2.18(1) Definitions.** The following terms, as used in this rule, are defined as
29 follows:

30 *a. Panel.* Those jurors drawn or assigned for service to a courtroom, judge,
31 or trial.

32 *b. Pool.* The sum total of prospective jurors reporting for service.

33 **2.18(2) Selection of panel.** For each jury trial, the clerk shall randomly select
34 a number of prospective jurors equal to twelve plus the prescribed number of
35 alternates and strikes. The clerk may randomly select additional prospective
36 jurors for the panel to allow for possible challenges for cause.

1 **2.18(3) *Depletion of panel.*** If for any reason the panel is exhausted without
2 a jury being selected, the panel shall be replenished from the pool or, if
3 necessary, in the manner provided in Iowa Code chapter 607A.

4 **2.18(4) *Challenges to the panel or the pool.*** Before any juror is sworn for
5 examination, either party may challenge the panel or the pool on the record
6 distinctly specifying the grounds, which can be founded only on a material
7 departure from the legal requirements for selecting the jury. Any officer,
8 judicial or ministerial, whose irregularity is complained of, and any other
9 persons, may be examined concerning the facts specified. If the court sustains
10 the challenge, it shall discharge the panel or the pool, as appropriate.

11 **2.18(5) *Challenges to individual juror for cause.*** A challenge for cause of an
12 individual juror may be made orally by the state or defendant and must
13 distinctly specify the facts constituting the cause. A challenge may be made on
14 an individual juror for any of the following causes:

15 a. A previous conviction of the juror of a felony unless it can be established
16 through the juror's testimony or otherwise that either the juror's voting rights
17 have been restored or more than ten years have passed since the juror's
18 conviction or release from confinement for that felony, whichever is later.

19 b. Failure to meet any of the qualifications prescribed by Iowa Code chapter
20 607A to render a person a competent juror.

21 c. A physical or mental condition that would reasonably render the juror
22 incapable of performing the duties of a juror.

23 d. Affinity or consanguinity, within the fourth degree, to an alleged victim,
24 complaining witness, or defendant.

25 e. Standing in the relation of guardian and ward, attorney and client,
26 employer and employee, or landlord and tenant with an alleged victim,
27 complaining witness, or defendant.

28 f. Having been adverse to the defendant in a prior civil action or criminal
29 prosecution.

30 g. Having served on a grand jury that heard evidence of the case.

31 h. Having served on a trial jury that heard evidence of the case in a trial of
32 another defendant.

33 i. Having been on a jury previously sworn to try the same indictment.

34 j. Having served as a juror in a civil action that heard evidence of the case.

1 *k.* Having formed or expressed such an opinion as to the guilt or innocence
2 of the defendant as would prevent the juror from rendering a true verdict upon
3 the evidence submitted on the trial.

4 *l.* Having provided bail for any defendant in the indictment.

5 *m.* Having been a defendant in a similar indictment or the victim of a similar
6 offense within the preceding year.

7 *n.* Having been a witness either for or against the defendant at the
8 preliminary hearing or before the grand jury.

9 *o.* Where the circumstances indicate the juror would have an actual bias for
10 or against a party.

11 **2.18(6)** *Examination of jurors.* Before examination, the jurors shall be sworn.
12 On sensitive subjects, the court may order that jurors be examined
13 individually, separate from each other and in a location other than the
14 courtroom. If an individual juror is challenged, the juror may be examined as a
15 witness to prove or disprove the challenge and must answer every question
16 pertinent to the inquiry thereon, but the juror's answers cannot be used in a
17 civil or criminal proceeding against the juror, other than a prosecution for
18 perjury or contempt. When a potential juror expresses actual bias relevant to
19 the case, including but not limited to bias based on age, race, creed, color, sex,
20 sexual orientation, gender identity, national origin, religion, or disability, the
21 court may clarify the juror's position but shall not attempt to rehabilitate the
22 juror by its own questioning.

23 **2.18(7)** *Order of challenges for cause.* The state shall first complete its
24 challenges for cause, followed by the defendant, until a number of jurors equal
25 to twelve plus the prescribed number of strikes has been obtained.

26 **2.18(8)** *Vacancy filled.* If a challenge for cause is sustained, another juror
27 shall be called and examined. Any new juror thus called may be challenged for
28 cause and shall be subject to being struck from the list as other jurors.

29 **2.18(9)** *Clerk to prepare list; procedure.* The clerk shall prepare a list of
30 jurors called. After challenges for cause are completed, each side, commencing
31 with the state, shall alternately exercise its strikes by indicating the strike
32 upon the list opposite the name of the juror.

33 **2.18(10)** *Number of strikes.*

34 *a. Class "A" felonies.* If the offense charged is a class "A" felony, the state
35 and defendant shall each strike ten prospective jurors.

1 **b. Other felonies.** If the offense charged is a felony other than a class “A”
2 felony, the state and the defendant shall each strike six prospective jurors.

3 **c. Misdemeanors.** If the offense charged is a misdemeanor, the state and the
4 defendant shall each strike four prospective jurors.

5 **2.18(11) Multiple charges.** If the indictment charges multiple offenses, the
6 number of strikes shall be based on the highest grade of offense charged.

7 **2.18(12) Multiple defendants.** Where two or more defendants are tried
8 together, each defendant shall have one-half the number of strikes allowed in
9 rule 2.18(10). The state shall have the number of strikes equal to the total
10 number of strikes allotted to all defendants. Subject to the court’s approval, the
11 parties may agree to a reduced number of strikes.

12 **2.18(13) Selecting alternate jurors.** The court may require selection of one or
13 more alternate jurors whose qualifications will be the same as principal jurors.

14 **a. The role of alternate jurors.** An alternate juror shall replace a principal
15 juror if, during trial, a principal juror becomes unable to serve.

16 **b. Alternate juror selection procedure.** Prior to commencing jury selection, the
17 court must determine, on the record, with input of counsel, how many
18 alternate jurors will be selected and how they will be selected, provided that
19 any method of selection must comply with this rule. The clerk will call for
20 examination the number of additional prospective jurors necessary to allow for
21 the number of alternates to be selected and one additional strike for each
22 party.

23 **c. Examination and seating of alternate jurors.** Jury examination will proceed
24 contemporaneously for both principal and alternate jurors.

25 **d. Identity of alternate jurors.** The identity of the alternate jurors will not be
26 revealed to the jury or the alternates until the jury retires to deliberate.

27 **e. Excusing alternate jurors.** Once the jury commences deliberations, any
28 remaining alternate jurors shall be excused from further service and not
29 recalled.

30 **2.18(14) Reading of names or numbers.** After all challenges have thus been
31 exercised or waived and the required number of jurors has been struck from
32 the list, the court shall read the names or assigned numbers of the jurors
33 remaining, including any alternates, who shall constitute the jury selected.

34 **2.18(15) Jurors sworn.** Once the jurors are selected they shall be sworn to
35 try the issues.
36

Rule 2.19 Trial.

2.19(1) *Order of trial and arguments.*

After the jury has been impaneled and sworn, the trial shall proceed in the following order:

a. The prosecuting attorney must read the accusation from the indictment and state the defendant's plea to the jury. The level of offense shall not be read.

b. The prosecuting attorney may summarize the evidence expected to sustain the indictment.

c. The defendant's attorney may summarize the expected evidence, waive the making of such statement, or reserve the right to make such statement immediately prior to the presentation of defendant's evidence.

d. The prosecuting attorney shall offer evidence in support of the indictment.

e. The defendant's attorney may offer evidence in support of the defense.

f. Either party may offer rebutting evidence.

g. After the completion of evidence, the prosecuting attorney may offer a closing argument, the defendant's attorney may offer a closing argument, and the prosecution may offer a rebuttal.

COMMENT: The previous version of rule 2.19 provided that "[l]ength of argument and the number of counsel arguing shall be as limited by the court." There is no intent to change this law; however, the drafters of the current rule did not want to imply that the court lacked authority to limit segments of the trial other than closing argument.

2.19(2) *Advance notice of evidence supporting indictment.*

a. The prosecuting attorney shall not be permitted to introduce any witness whose minutes of testimony were not filed at least 10 days before the commencement of trial, except rebuttal witnesses.

b. If the prosecuting attorney does not provide the requisite notice, the court may order the state to permit the discovery of such witness, grant a continuance, or enter such other order as it deems just under the circumstances. If the court finds that no less severe remedy is adequate to protect the defendant from undue prejudice, the court may order the exclusion of the testimony of any such witness.

2.19(3) *Reporting of trial.* Reporting of the trial shall be governed by Iowa Rule of Civil Procedure 1.903. However, reporting may not be waived except for voir dire in misdemeanor cases.

1 **2.19(4) *The jury during trial.***

2 *a. Motion for a view.* Upon motion of either party, the court may allow the
3 jury to view a location material to the case. The jury shall be accompanied by a
4 person designated by the court and transported by proper officers. Any person
5 accompanying the jury shall be sworn to protect the integrity of the
6 proceedings and shall not allow communications to occur on any subject
7 connected with the trial.

8 *b. Juror may not be witness.* A juror may not testify as a witness in the trial
9 of the case in which the juror is sitting.

10 *c. Sequestration of jurors.* For good cause shown, the court may sequester
11 the jury during trial in a manner prescribed by the court.

12 *d. Admonition to jurors.*

13 (1) After the jury is impaneled, the court shall admonish the jurors:

14 1. Not to speak or communicate with any person and not to permit any
15 person to speak to or communicate with them regarding any subject related to
16 the case. This prohibition includes all forms of communication, including social
17 media.

18 2. To report immediately to the court any attempt by anyone to
19 communicate with them in any way concerning the case.

20 3. Not to converse among themselves or form or express an opinion on any
21 aspect of the case until the case is finally submitted.

22 4. Not to visit any place involved in the case, including the scene of the
23 alleged offense.

24 5. Not to view, read or listen to any accounts of the case or trial, whether on
25 traditional media or social media.

26 6. Not to do any searches, research, experiments, or tests relating to
27 anything connected with the case or trial. This includes internet research and
28 accessing social media.

29 (2) At adjournments, the court shall restate or remind the jury of the
30 admonition.

31 *e. Notes taken by jurors during trial.* Notes may be taken by jurors during
32 the testimony of witnesses. At the completion of the jury's deliberations, the
33 court shall destroy any notes taken during the trial.

34 *f. Exhibits during deliberations.* Upon retiring for deliberations, the jury shall
35 be given the exhibits received in evidence and the court's instructions.

36 Redactions should be made before exhibits are received in evidence. The jury

1 shall not be given depositions. The court may also withhold from the jury
2 original exhibits whose presence in the jury room could present an issue of
3 safety, security, or risk of loss.

4 *g. Instructions.* The rules relating to the instruction of juries in civil cases
5 apply to criminal cases.

6 *h. Duty of court to instruct on lesser included offenses.* The trial court shall
7 instruct the jury as to any offense charged and any lesser included offense
8 supported by the evidence. The defendant may, with the consent of the state,
9 waive the submission to the jury of any lesser included offense. Such waiver
10 shall be made on the record.

11 *i. Jury deliberations.* On final submission, the jury shall retire for
12 deliberation and be kept together under an officer's charge until the jurors
13 agree on a verdict or are discharged by the court. Unless the jury is
14 sequestered, the court may permit the jurors to separate temporarily overnight,
15 on weekends, on holidays, and in emergencies.

16 *j. Duties of the officer in charge during deliberations.* The officer in charge
17 must be sworn to:

18 (1) Not allow any communication to or from the jury during deliberations.

19 (2) Not personally make any communication to the jurors without court
20 order, except to ask if they have agreed on a verdict.

21 (3) Not communicate to any person the state of the jury's deliberations or
22 the verdict agreed upon before it is rendered.

23 *k. Juror inquiries.* After the jury has retired for deliberation, if any member
24 of the jury has a question as to any part of the evidence or relevant point of
25 law, the question must be made in writing and delivered to the judicial
26 assistant by a juror, who shall then deliver it promptly to the presiding judge.
27 The court, after consultation with the parties outside the presence of the jury,
28 shall determine the response to be provided. Any response shall be provided in
29 writing. A record shall be made of the question and the response.

30 **2.19(5) Mistrial.**

31 *a. Discharge for mistrial.*

32 (1) The court may declare a mistrial and discharge a jury for the following
33 reasons:

34 1. Because of any accident or calamity requiring termination of the trial
35 upon motion of a party for cause shown.

2. When a required continuance would make it impractical to proceed with the same jury.

3. When the jurors have deliberated until it satisfactorily appears that they cannot agree.

4. Because of an error resulting in the denial of a fair trial.

(2) If the court declares a mistrial, the case shall be retried within 90 days unless double jeopardy bars further prosecution, the defendant waives speedy trial, or good cause for further delay is shown.

b. Lack of territorial jurisdiction. If the court determines it lacks territorial jurisdiction of the offense, the court shall dismiss the indictment and discharge the jury. The court shall either order the immediate release of the defendant or order the defendant's retention in custody for a reasonable time to allow the prosecuting attorney to inform the relevant authorities in the appropriate jurisdiction and to permit that jurisdiction to take custody of the defendant.

2.19(6) *The trial judge.*

a. Unavailability of trial judge. If the judge before whom trial has commenced is unable to continue presiding over any stage of the case, including sentencing, another judge may complete the proceedings. If such other judge cannot in fairness complete the proceedings due to not having previously presided, that judge may grant a new trial.

b. Adjournments declared by trial court. While the jury is absent, the court may adjourn for other business, but it shall be available for every purpose connected with the case submitted to the jury until a verdict is rendered or the jury is discharged.

2.19(7) *Motion for judgment of acquittal.*

a. Motion before submission to jury. At the close of evidence on either side, if the evidence is insufficient to sustain a conviction of an offense, the court on motion of a defendant or on its own motion shall enter a judgment of acquittal on that offense.

b. No need to renew motion. If a defendant's motion for judgment of acquittal at the close of the state's case is not granted, the defendant may offer evidence without having to renew the motion at the close of evidence.

c. Reservation of decision on motion. If a motion for judgment of acquittal is made at the close of all evidence, the court may either decide the motion at that time or reserve decision on the motion and submit the case to the jury. In the

1 latter case, the court shall decide the motion after the jury returns a verdict or
2 is discharged without having returned a verdict.

3 **2.19(8)** *Trial of questions involving prior convictions.* After conviction of the
4 current offense, but prior to pronouncement of sentence, if the indictment
5 alleges one or more prior convictions that subject the defendant to an
6 increased sentence, the defendant shall have the opportunity in open court to
7 affirm or deny that the defendant is the person previously convicted, or that
8 the defendant was not represented by counsel and did not waive counsel when
9 previously convicted.

10 a. Prior to accepting any affirmation by the defendant, the court shall
11 determine that a factual basis exists for the affirmation and shall have a
12 colloquy with the defendant to ensure any admission is knowing and voluntary
13 consistent with rule 2.8(2). The court shall inform the defendant:

14 (1) Of the nature of the enhancement.

15 (2) That the prior convictions must have been obtained when the defendant
16 was represented by, or waived the right to, counsel.

17 (3) Of the maximum and minimum possible punishment resulting from the
18 enhancement.

19 (4) That by affirming that the defendant is the person previously convicted,
20 the defendant waives the right to a trial by jury, the right to the assistance of
21 counsel, the right to confront and cross-examine witnesses, and the right
22 against self-incrimination.

23 (5) That the defendant's affirmation means no trial will be held on whether
24 the defendant is the person previously convicted.

25 (6) That the state is not required to prove the prior convictions were entered
26 with counsel if the defendant does not first raise the claim.

27 (7) That any challenges to the increased sentence resulting from the prior
28 convictions must be raised in a timely motion in arrest of judgment and failure
29 to raise such challenges shall preclude the right to assert them on appeal.

30 b. If the defendant denies being the person previously convicted, sentence
31 shall be postponed for such time as to permit a trial before a jury on the issue
32 of the defendant's identity with the person previously convicted. Other
33 objections shall be heard and determined by the court.

34 c. On the issue of identity, the court may reconvene the jury that heard the
35 current offense or dismiss that jury and submit the issue to another jury to be
36 later impaneled.

Rule 2.20 Witnesses.

2.20(1) *The defendant.* A defendant in a criminal action or proceeding shall be a competent witness in the defendant's own behalf but cannot be called by the state.

COMMENT: No substantive changes are intended from existing rule 2.20(1).

2.20(2) *Compelling attendance of out-of-state witnesses.* The presence and testimony of a witness located outside the state may be secured as provided by Iowa Code chapter 819.

2.20(3) *Immunity.*

a. Waiver required. Before any witness shall be compelled to answer or to produce evidence in any judicial proceeding after having asserted in good faith that such answer or evidence would violate the witness's privilege against self-incrimination, the witness must knowingly waive the right unless granted immunity.

b. Application for immunity. If a witness refuses to testify or produce documents or evidence the county attorney or attorney general may file a verified application for immunity setting forth that:

(1) The testimony of the witness, or the production of documents or other evidence in the possession of such witness is necessary and material.

(2) The witness has refused to testify, or to produce documents or other evidence upon the ground that such testimony or evidence would tend to incriminate the witness.

(3) It is the considered judgment of the county attorney or attorney general that justice and the public interest require the testimony, documents, or evidence in question.

c. Reporting required. Any testimony given in support of the application for immunity shall be reported and a transcript of the testimony shall be filed with the application.

d. Ruling on application. Following receipt of a proper application, the district court shall enter an order granting the witness immunity from prosecution for any offense concerning which the witness is compelled to give testimony or provide evidence and based on the use, direct or indirect, of any testimony or evidence the witness is compelled to give.

e. Effect of immunity. Testimony or evidence that a witness granted immunity has given shall not be used against the witness in any trial or

proceeding, or subject the witness to any penalty or forfeiture, except a charge of perjury or contempt of court committed in the course of or during the giving of such testimony. In addition, the witness shall not be prosecuted for any offense concerning which the witness was compelled to give testimony or provide evidence.

COMMENT: The changes to this part of rule 2.20 are intended to make clear that the rule follows the holding of *Allen v. Iowa District Court*, 582 N.W.2d 506 (Iowa 1998), with respect to the scope of immunity – i.e., the immunity is both transactional and use immunity.

f. Filing of application and other materials. The application, transcripts, and orders required by this rule shall be filed as a separate case in the criminal docket entitled “In the matter of the testimony of (Name of witness).” A transcript of testimony given pursuant to an order of immunity shall be made at state expense and filed in this docket. The application, order granting immunity, and all transcripts filed shall be sealed upon motion of the witness, the defendant or the prosecuting attorney and shall be opened only by order of the court.

g. Refusal to testify after immunity granted. Whoever shall refuse to testify or to produce evidence after having been granted immunity shall be subject to punishment for contempt of court as in the case of any witness who refuses to testify.

2.20(4) Witnesses for indigents. Counsel for a defendant who because of indigency is financially unable to obtain expert or other witnesses necessary to an adequate defense of the case may request in a written application that the necessary witnesses be secured at public expense. Upon finding that the services are necessary and that the defendant is financially unable to provide compensation, the court shall authorize counsel to obtain the witnesses on behalf of the defendant. The court shall determine reasonable compensation and direct payment pursuant to Iowa Code chapter 815.

Rule 2.21 Evidence.

2.21(1) Rules. The rules of evidence apply to criminal proceedings.

2.21(2) Questions of law and fact. In a jury trial of a criminal case, questions of law are decided by the court and questions of fact are determined by the jury.

2.21(3) Corroboration of accomplice or person solicited. A conviction cannot be had upon the testimony of an accomplice or a solicited person, unless

1 corroborated by other evidence, which shall tend to connect the defendant with
2 the commission of the offense. Corroboration is not sufficient if it merely shows
3 the commission of the offense or the circumstances thereof. Corroboration of
4 the testimony of victims shall not be required.

5 **2.21(4) *Confession of defendant.*** The confession of the defendant, unless
6 made in open court, will not warrant a conviction unless accompanied with
7 other proof that the defendant committed the offense.

8 **2.21(5) *Disposition of exhibits.***

9 *a.* In all criminal cases other than class “A” felonies, the clerk may dispose
10 of all exhibits when 60 days have elapsed after the expiration of all sentences
11 imposed in the case.

12 *b.* In no event shall the clerk dispose of exhibits when there is a pending
13 appeal or postconviction relief action.

14 *c.* Disposal of firearms and ammunition shall be by delivery to the
15 Department of Public Safety for disposition as provided by law. Disposal of
16 controlled substances shall be by delivery to the Department of Public Safety
17 for disposal under Iowa Code section 124.506.

18
19 **Rule 2.22 Verdict.**

20 **2.22(1) *Form of verdicts.*** For each count submitted in the jury instructions,
21 the jury must render a unanimous verdict of “guilty,” “not guilty,” or “not guilty
22 by reason of insanity.” The jury’s verdict shall include a determination of the
23 degree of offense on those counts where the level of offense must be
24 determined.

25 **2.22(2) *Proof necessary to sustain verdict of guilty.***

26 *a. Reasonable doubt.* Where there is a reasonable doubt of the defendant’s
27 guilt, the defendant is entitled to an acquittal.

28 *b. Reasonable doubt as to degree.* Where there is a reasonable doubt as to
29 the degree of the offense of which the defendant is guilty, the defendant shall
30 only be convicted of the degree as to which there is no reasonable doubt.

31 **2.22(3) *Special interrogatories.***

32 *a.* For each special interrogatory submitted in the jury instructions, the
33 jury’s verdict form must include a place for an answer. The following issues
34 require special interrogatories:

35 (1) Whether a witness was an accomplice.

36 (2) Whether an accomplice’s testimony was corroborated.

1 (3) Factual findings that subject the defendant to a greater minimum or
2 maximum sentence, such as whether the defendant committed the offense with
3 the use of a dangerous weapon.

4 *b. The parties may agree to waive the submission of special interrogatories*
5 *on the accomplice issues identified in 2.22(3)(a)(1) and (2).*

6 **2.22(4) *Multiple defendants or offenses.*** If the jury cannot agree on a verdict
7 as to all defendants or offenses, it may render a verdict as to those defendants
8 or offenses as to which it agrees. A judgment shall be entered accordingly as to
9 those defendants or offenses and the case as to the remaining defendants or
10 offenses may be tried by another jury.

11 **2.22(5) *Return of jury and verdict.***

12 *a. Return and polling of unanimous verdict.* The jury, unanimously agreeing
13 upon a verdict, shall bring the verdict into court, where it shall be read aloud,
14 and inquiry made of the jurors if it is their verdict. A party may then require a
15 poll asking each juror if it is the juror's verdict. If any juror expresses
16 disagreement on such poll or inquiry, the jury shall be sent out for further
17 deliberation; otherwise, the verdict is complete and the jury shall be
18 discharged.

19 *b. Sealed verdicts.* In any misdemeanor case, the court may permit the
20 return of a sealed verdict on agreement of the parties. Such verdict shall be
21 signed by all jurors, sealed and delivered to the court, which shall enter it upon
22 the record and disclose it to the parties as soon as practicable. The sealing of
23 the verdict is equivalent to rendition in open court, but the jury shall not be
24 polled or permitted to disagree with the verdict.

25 **2.22(6) *Verdict insufficient or inconsistent; reconsideration.*** If the jury
26 renders a verdict that is in none of the forms specified in this rule, or a verdict
27 of guilty in which it appears to the court that the jury was mistaken as to the
28 law, or a verdict that is inconsistent, the court may direct the jury to reconsider
29 it.

30 **2.22(7) *Defendant discharged on acquittal.*** If judgment of acquittal is given
31 on a general verdict of not guilty and the defendant is not detained for any
32 other legal cause, the defendant must be discharged as soon as the judgment
33 is given.

34 **2.22(8) *Acquittal on ground of insanity; commitment hearing.***

35 *a. Insanity defense verdict form.* If the defendant raises a defense of insanity,
36 the verdict form shall include the presented defense as a possible verdict.

1 *b. Commitment for evaluation.*

2 (1) Upon a verdict of not guilty by reason of insanity, the court shall
3 immediately order the defendant committed to a state mental health institute
4 or other appropriate facility for a complete psychiatric evaluation and shall set
5 a date for a hearing to inquire into the defendant's present mental condition.

6 (2) The court shall prepare written findings that shall be delivered to the
7 facility at the time the defendant is admitted fully informing the chief medical
8 officer of the facility of the reason for the commitment.

9 (3) The court shall direct the chief medical officer to report to the court in
10 writing within 15 days of the admission of the defendant to the facility, stating
11 the chief medical officer's diagnosis and opinion as to whether the defendant is
12 mentally ill and dangerous to the defendant's self or to others. An extension of
13 time for the evaluation, not to exceed 15 days, may be granted upon the chief
14 medical officer's request after due consideration of any objections or comments
15 the defendant may have.

16 (4) Upon receipt of the report, the court shall promptly forward a copy to the
17 defendant's attorney and to the prosecuting attorney.

18 *c. Independent examination.* The defendant may have a separate
19 examination conducted at the facility by a licensed physician of the defendant's
20 choice and the Report of the independent examiner shall be submitted to the
21 court.

22 *d. Return for hearing.* Upon receipt of the report or any subsequent report,
23 the Court shall hold a hearing to inquire into the defendant's mental condition.
24 All parties shall be present. However, if the chief medical officer believes
25 uninterrupted custody of the defendant at the facility is necessary to ensure
26 the defendant's safety or the safety of others and states that finding in the
27 report, the court may direct the chief medical officer to make arrangements for
28 the defendant to appear at the hearing by phone or interactive audiovisual
29 system.

30 *e. Hearing; release or retention in custody.*

31 (1) If, upon hearing, the court finds that the defendant is not mentally ill
32 and no longer dangerous to the defendant's self or to others, the court shall
33 order the defendant released. If, however, the court finds that the defendant is
34 mentally ill and dangerous to the defendant's self or to others, the court shall
35 order the defendant committed to a state mental health institute or other
36 appropriate facility and retained in custody until the court finds that the

1 defendant is no longer mentally ill and dangerous to the defendant's self or to
2 others. The court shall give due consideration to the chief medical officer's
3 findings and opinion along with any other relevant evidence that may be
4 submitted.

5 (2) No more than 30 days after entry of an order for continued custody, and
6 thereafter at intervals of not more than 60 days as long as the defendant is in
7 custody, the chief medical officer of the facility to which the defendant is
8 committed shall report to the court which entered the order. Each periodic
9 report shall describe the defendant's condition and state the chief medical
10 officer's prognosis if the defendant's condition has remained unchanged or has
11 deteriorated. The court shall forward a copy of each report to the defendant's
12 attorney and to the prosecuting attorney.

13 (3) If the chief medical officer reports at any time that the defendant is no
14 longer mentally ill and is no longer dangerous to the defendant's self or to
15 others, the court shall hold a hearing to determine if continued custody and
16 treatment of the defendant are necessary to protect the safety of the
17 defendant's self or others. If the court finds continued custody is necessary, the
18 court shall order the defendant committed to the Iowa Medical and
19 Classification Center for further evaluation, treatment, and custody. Otherwise,
20 the court shall order the release of the defendant.

21 22 **Rule 2.23 Judgment.**

23 **2.23(1) Entry of judgment.**

24 *a. Acquittal.* Upon a verdict of not guilty for the defendant or special verdict
25 upon which a judgment of acquittal must be given, the court must render
26 judgment of acquittal immediately.

27 *b. Conviction.* Upon a guilty plea, guilty verdict, or a special verdict upon
28 which a judgment of conviction may be rendered, the court must fix a date for
29 pronouncing judgment, which must be within a reasonable time but not less
30 than 15 days after the plea is entered or the verdict is rendered, unless the
31 defendant consents to a shorter time.

32 **2.23(2) Imposition of sentence.**

33 *a. Informing the defendant.* When the defendant appears for judgment, the
34 court shall inform the defendant of the defendant's plea or the verdict and ask
35 whether the defendant has any legal cause to show why judgment should not
36 be pronounced. The defendant, by timely motion, may show for cause against

1 the entry of judgment any sufficient ground for a new trial or in arrest of
2 judgment.

3 *b. Incompetency.* The provisions of Iowa Code chapter 812 apply to
4 sentencing proceedings.

5 *c. Procedure.* Before imposing sentence, the court shall do all of the
6 following:

7 (1) Verify that the defendant and the defendant's attorney have read and
8 discussed the presentence investigation report and any addendum to the
9 report.

10 (2) Provide the defendant's attorney an opportunity to speak on the
11 defendant's behalf.

12 (3) Address the defendant personally in order to permit the defendant to
13 make a statement or present any information to mitigate the defendant's
14 sentence.

15 (4) Provide the prosecuting attorney an opportunity to speak.

16 (5) After hearing any statements presented, the court shall address any
17 victim of the crime who is present at the sentencing and shall allow any victim
18 to be reasonably heard, including, but not limited to, by presenting a victim
19 impact statement in the manner described in Iowa Code section 915.21.

20 *d. Other witnesses or evidence.* Before receiving victim statements, the trial
21 court, in its discretion, may permit either side to present additional witnesses
22 or evidence in support of its position.

23 *e. Basis for sentence imposed.* The court shall ensure that the basis for the
24 sentence imposed appears in the record. The court shall consider all of the
25 following:

26 (1) The recommendation of the prosecuting attorney, subject to the terms of
27 the plea agreement, if any.

28 (2) The recommendation of defendant's counsel, subject to the terms of the
29 plea agreement, if any.

30 (3) The statement of the victim or victims of the offense, if any, as provided
31 by law.

32 (4) The content and recommendation of the presentence investigation report.

33 (5) All other factors required by law to be considered.

34 *f. Judgment entered.* If no sufficient cause is shown why judgment should
35 not be pronounced, and none appears to the court upon the record, judgment
36 shall be rendered. In every case, the court shall include in the judgment entry

1 the number of the particular section of the Code under which the defendant is
2 sentenced. The court shall state on the record the basis for the sentence
3 imposed and shall particularly state the reason for imposition of any
4 consecutive sentence.

5 *g. Notification of right to appeal.* After imposing sentence in a case, the court
6 shall advise the defendant in open court and on the record of the following:

7 (1) That the defendant has a statutory right to appeal.

8 (2) That if the defendant pled guilty to an offense other than a class “A”
9 felony, no appeal may be taken from the conviction and sentence on that
10 offense without good cause.

11 (3) The deadline for filing an appeal.

12 (4) That the deadline for appeal is jurisdictional and that failing to file an
13 appeal on time and in the manner specified in Iowa R. App. P. 6.101 will mean
14 the defendant cannot appeal.

15 (5) That a person who is unable to pay the costs of appeal can apply to the
16 court for appointment of counsel and the preparation of transcripts as provided
17 in Iowa Code sections 814.9 and 814.11.

18 *h. Clerical mistakes.* Clerical mistakes in judgments, orders, or other parts
19 of the record and errors in the record arising from oversight or omission may
20 be corrected by the court at any time and after such notice, if any, as the court
21 orders.

22 23 **Rule 2.24 Motions after trial.**

24 **2.24(1)** *In general.* Permissible motions after trial include motions for new
25 trial, motions in arrest of judgment, and motions to correct a sentence.

26 **2.24(2)** *New trial.*

27 *a. Motion generally.* A motion for new trial by the defendant shall be made
28 not later than 45 days after verdict of guilty or special verdict upon which a
29 judgment of conviction may be rendered and not later than five days before the
30 date set for pronouncing judgment.

31 *b. Grounds.* The court, after giving the parties notice and an opportunity to
32 be heard, may grant a new trial on any of the following grounds:

33 (1) When the trial has been held in the absence of the defendant, in cases
34 where such presence is required by law, except as provided in rule 2.27.

35 (2) When the jury has been prejudicially exposed to information the jury was
36 not authorized to receive.

1 (3) When the jurors have separated without leave of court, after retiring to
2 deliberate upon their verdict, or have been guilty of any misconduct tending to
3 prevent a fair and just consideration of the case.

4 (4) When the verdict has been decided by lot, or by means other than a fair
5 expression of opinion on the part of all jurors.

6 (5) When the jury was improperly instructed in a material matter.

7 (6) When the prosecuting attorney has committed prejudicial error or
8 misconduct.

9 (7) When the verdict is contrary to law or contrary to the weight of the
10 evidence.

11 (8) When from any other cause the defendant has not received a fair and
12 impartial trial.

13 *c. Motion alleging newly discovered evidence.* A motion for a new trial based
14 upon newly discovered evidence may be made by the defendant after judgment
15 when the defendant has discovered important and material evidence in the
16 defendant's favor since the verdict, which the defendant could not with
17 reasonable diligence have discovered and produced at the trial.

18 (1) A motion based upon this ground shall be made without unreasonable
19 delay and, in any event, within two years after final judgment, but such motion
20 may be considered thereafter upon a showing of good cause.

21 (2) When a motion for a new trial is made upon the ground of newly
22 discovered evidence, the defendant must produce at the hearing, in support
23 thereof, the affidavits or testimony of the witnesses by whom such evidence is
24 expected to be given. The court may, upon request of the defendant allow the
25 defendant additional time to procure such affidavits or testimony for such
26 length of time as may be reasonable under all circumstances of the case.

27 *d. Trials without juries.* On a motion for a new trial in an action tried without
28 a jury, the court may where appropriate, in lieu of granting a new trial, vacate
29 the judgment if entered, take additional testimony, amend findings of fact and
30 conclusions of law or make new findings and conclusions, and enter judgment
31 accordingly.

32 *e. Effect of a new trial.* Upon a new trial, the former verdict cannot be used
33 or referred to either in evidence or in argument.

1 **2.24(3) Arrest of judgment.**

2 *a. Motion.*

3 (1) A defendant may file a motion in arrest of judgment to urge that no
4 judgment be rendered on a finding, plea, or verdict of guilty.

5 (2) A defendant's failure to challenge the adequacy of a guilty plea
6 proceeding by motion in arrest of judgment shall preclude the defendant's right
7 to assert such challenge on appeal.

8 *b. Time of making motion.* The motion must be made not later than 45 days
9 after a guilty plea, a guilty verdict, or a special verdict upon which a judgment
10 of conviction may be rendered, but in any case not later than five days before
11 the date set for pronouncing judgment.

12 *c. Grounds.* Such motion shall be granted when upon the whole record no
13 legal judgment can be pronounced. However, with respect to a guilty plea, a
14 motion in arrest of judgment may be sustained only if the defendant also
15 demonstrates that the defendant more likely than not would not have pled
16 guilty if the defect in the plea proceedings had not occurred.

17 *d. On the court's own motion.* The court may arrest the judgment on its own
18 motion if grounds for doing so exist as set forth in rule 2.24(3)(c).

19 *e. Effect of order arresting judgment.*

20 (1) An order arresting judgment on the ground the guilty plea proceeding
21 was defective places the defendant in the situation in which the defendant was
22 immediately after the indictment was found. However, when the only ground
23 upon which the guilty plea is found to be defective is failure to establish a
24 factual basis for the charge, the court shall afford the state an opportunity to
25 establish an adequate factual basis before arresting judgment.

26 (2) An order arresting judgment on any other ground places the defendant
27 in the situation in which the defendant was immediately before the indictment
28 was found.

29 *f. Proceedings after an order arresting judgment on any ground other than a*
30 *defect in a guilty plea proceeding.* If a motion arresting judgment is granted, but
31 from the trial evidence, there is reasonable ground to believe the defendant is
32 guilty of an offense and a new indictment can be framed, the court may order
33 that a defendant in custody continue to be held in custody or that a
34 defendant's bail be continued for a specified period pending the filing of a new
35 indictment. If the evidence upon trial appears to the trial court insufficient to

1 charge the defendant with any offense, the defendant must, if in custody, be
2 released' and any bail must be exonerated.

3 **2.24(4) General principles.**

4 *a. Extensions.* The time for filing motions for new trial or in arrest of
5 judgment may be extended by the court for good cause.

6 *b. Disposition.* Upon a timely motion for a new trial, or in arrest of judgment,
7 the court shall defer the judgment and proceed to hear and decide the motions.

8 *c. Appeal.* Appeal from an order granting or denying a motion for new trial or
9 in arrest of judgment may be taken by the state or the defendant. Where the
10 court has denied the motion for new trial or in arrest of judgment, appeal may
11 be had only after judgment is pronounced.

12 *d. Custody pending appellate determination.* Pending determination by the
13 appellate court of such appeal, the trial court shall determine whether the
14 defendant shall remain in custody or be released, with or without bail. Where
15 the trial court has arrested judgment and an appeal is taken by the state, and
16 it further appears to the trial court that there is no evidence sufficient to
17 charge the defendant with an offense, the defendant shall not be held in
18 custody.

19 **2.24(5) Correction of sentence.**

20 *a. Time when correction of sentence may be made.* The district court may
21 correct an illegal sentence at any time on motion of a party or on its own
22 motion. Before correcting anything other than a clerical error, the court shall
23 give notice to the parties and afford them an opportunity to be heard.

24 *b. Definition of illegal sentence.* An illegal sentence is a sentence that could
25 not have been lawfully imposed for the defendant's conviction or convictions.
26 An illegal sentence includes a separate sentence for a conviction where that
27 conviction merged into another conviction. Challenges to the defendant's
28 underlying convictions or claims that the sentencing court abused its
29 discretion in imposing a sentence within legal limits do not raise illegal
30 sentencing issues.

31 *c. Credit for time served.* The defendant shall receive full credit for time
32 spent in custody under the sentence prior to correction or reduction.

Rule 2.25 Reserved.

COMMENT: Former rule 2.25, relating to the bill of exceptions, has been eliminated. The bill of exceptions is hereby abolished. If a party needs a record to be made of a matter that occurred off the record, it shall be the responsibility of that party to initiate that process by reasonable and appropriate means.

Rule 2.26 Execution of judgment and stay thereof.

2.26(1) Execution of judgment.

a. Mittimus. When a judgment of confinement is pronounced, a certified copy of the entry of judgment shall be furnished to the sheriff, who shall execute it accordingly. Upon delivery of the defendant to the person in charge of the place where the defendant is to be confined, the sheriff shall make a return of execution which shall be filed.

b. Upon discharge. When the court orders a defendant in custody released, the person in charge of the place of confinement shall file a notice of release with the clerk of court.

c. Execution for fine.

(1) Upon a judgment for a fine, an execution may be issued as upon a judgment in a civil case, and return thereof shall be made in like manner.

(2) Judgments for fines in all criminal actions rendered are liens upon the real estate of the defendant and shall be entered upon the lien index in the same manner and with like effect as judgments in civil actions.

d. Execution in other cases. When the judgment is for anything other than confinement or payment of money by the defendant, an execution consisting of a certified copy of the entry of such judgment, delivered to the sheriff of the proper county, shall authorize and require the sheriff to execute such judgment. The sheriff shall return and file the same, with the sheriff's actions thereon endorsed, with the court in which the judgment was rendered, within a time specified by the court but not exceeding 70 days after the date of the certificate of such certified copy.

e. Available credit for time spent in custody before trial or sentencing. The defendant shall receive full credit for time spent in custody on account of the offense for which the defendant is convicted.

2.26(2) Stay of execution.

a. Confinement. A sentence of confinement shall be stayed if an appeal is taken and the defendant is released pending disposition of appeal.

1 *b. Fine and other cases.* With respect to fines and other cases, the defendant
2 may have a stay of execution in the same manner as provided by law in civil
3 appeals.

4 *c. Probation.* An order placing the defendant on probation may be stayed if
5 an appeal is taken. If the order is not stayed, the court shall specify when the
6 term of probation shall commence. If the order is stayed, the court shall fix the
7 terms of the stay.

8 *d. Sex offender registry.* A stay of execution does not affect a defendant's
9 requirement to comply with sex offender registration and notification.

10
11 **Rule 2.27 Presence of defendant; regulation of conduct by the court.**

12 **2.27(1)** *Defendant's appearance.* In felony cases, the defendant is required
13 to appear as follows:

14 *a. Pretrial proceedings.* The defendant must be present personally or by
15 interactive audiovisual system at the initial appearance, arraignment and plea,
16 unless a written waiver is filed as provided in rule 2.2(2)(c) or rule 2.8(1)(e); and
17 all pretrial proceedings.

18 *b. Trial and sentencing proceedings.* The defendant must be personally
19 present at every stage of the trial, including the impaneling of the jury and the
20 return of the verdict, and at the imposition of sentence.

21 *c. Defendant in prison or incarcerated by another authority.* When the
22 defendant is in prison, or is in the custody of the federal government or another
23 state, at the defendant's request and with the agreement of the state the
24 defendant may appear by interactive audiovisual system for any matter except
25 the trial itself.

26 **2.27(2)** *When the district court may proceed in the defendant's absence.* In
27 all cases, the progress of the trial or any other proceeding shall not be
28 prevented whenever a defendant, initially present:

29 *a.* Is voluntarily absent after the trial or other proceeding has commenced.

30 *b.* Engages in conduct justifying exclusion from the courtroom.

31 **2.27(3)** *Presence not required.* A defendant need not be present in the
32 following situations:

33 *a.* A corporation may appear by counsel for all purposes.

34 *b.* The defendant's presence is not required for a reduction of sentence or a
35 correction of a clerical error in a sentence.

1 **2.27(4) *Regulation of conduct in the courtroom.***

2 a. When a defendant engages in conduct seriously disruptive of judicial
3 proceedings, one or more of the following steps may be employed to ensure
4 decorum in the courtroom:

5 (1) Citing the defendant for contempt.

6 (2) Removing the defendant from the courtroom until the defendant
7 promises to behave properly.

8 (3) Restraining the defendant, while keeping the defendant present.

9 b. The court may direct that any person in the courtroom be searched, and
10 any weapon or other prohibited item may be retained subject to order of the
11 court.

12 c. The court may have removed from the courtroom any person whose
13 exclusion is necessary to preserve the integrity or order of the proceedings.
14

15 **Rule 2.28 Right to appointed counsel.**

16 **2.28(1) *Representation.*** Every defendant, who is an indigent person as
17 defined in Iowa Code section 815.9 and who faces the possibility of
18 incarceration, is entitled to have counsel appointed to represent the defendant
19 at every stage of the proceedings from the defendant's initial appearance before
20 the court through appeal, including probation and parole revocation hearings
21 and motions to correct illegal sentences, unless the defendant waives such
22 appointment.

23 **2.28(2) *Limited appearances.*** Limited appearances are not allowed in
24 criminal cases where there is appointed counsel. However, appointed appellate
25 counsel may file a limited appearance for the purpose of obtaining district
26 court records.
27

28 **Rule 2.29 Withdrawal and duty of continuing representation.**

29 **2.29(1) *Withdrawal of counsel.***

30 a. Trial counsel may withdraw at any time after the dismissal of the
31 indictment or acquittal of the defendant.

32 b. In general, if a judgment of conviction and sentence is entered, an
33 appointed attorney may not withdraw without leave of the court.

34 (1) If defendant does not wish to appeal, appointed counsel may withdraw at
35 the expiration of the time for appeal from the judgment of conviction.

(2) If defendant wishes to appeal, appointed counsel may not withdraw before filing with the district court a notice of appeal, an application for appointment of counsel, and an application for production of transcripts at public expense.

2.29(2) *Appointment of counsel on appeal.* An indigent defendant, as defined in Iowa Code section 815.9, convicted of an indictable offense or a simple misdemeanor where defendant faces the possibility of incarceration, is entitled to appointment of counsel on appeal or application for discretionary review to the supreme court. An indigent defendant is also entitled to appointment of counsel on application for certiorari to the supreme court if such defendant had a right to appointment of counsel in the proceeding from which certiorari review is sought.

a. Application for appointment of appellate counsel shall be made to the trial court, which shall retain authority to act on the application after notice of appeal or application for discretionary review has been filed.

b. If defendant has proceeded as an indigent in the trial court and a financial statement already has been filed pursuant to Iowa Code section 815.9, the defendant, upon making application for appointment of appellate counsel, shall be presumed to be indigent, and an additional financial statement shall not be required unless evidence is offered that defendant is not indigent.

c. Defendant and appointed appellate counsel are under a continuing obligation to inform the trial court of any change in circumstances that would make defendant ineligible to qualify as indigent.

2.29(3) If the trial court finds defendant is ineligible for appointment of appellate counsel, it shall include in the record a statement of the reasons why counsel was not appointed. Defendant may apply to the supreme court for review of a trial court order denying defendant appointed counsel. Such application must be filed with the supreme court within ten days of the filing of the trial court order denying defendant's request for appointed counsel.

2.29(4) Unless appellate counsel is immediately appointed, trial counsel shall determine whether defendant wants to appeal and shall take steps to effect the appeal pursuant to rule 2.29(1)(b)(2).

2.29(5) Withdrawals allowed under this rule pertain only to the district court proceedings, and counsel of record in the district court will be deemed to be counsel in the appellate court in accordance with the provisions of Iowa R.

App. P. 6.109(4) in the event of an appeal unless other counsel is retained or appointed and notice is given to the parties and the clerk of the supreme court. If trial counsel was not court appointed, trial counsel may withdraw from appellate proceedings pursuant to rule 6.109(5).

Rule 2.30 Reserved.

COMMENT: Former rules 2.29 and 2.30 have been combined in new rule 2.29.

Rule 2.31 Compensation of appointed appellate counsel. Appointed appellate counsel's compensation shall be determined by the trial court pursuant to the provisions of Iowa Code section 815.7.

Rule 2.32 Forms — Appointment of Counsel.

COMMENT: No changes have been made to existing forms.

Rule 2.33 Dismissal of prosecutions; right to speedy trial.

2.33(1) Dismissal generally; effect. The court, upon the application of the prosecuting attorney, in the furtherance of justice, may order the dismissal of any pending criminal prosecution, the reasons therefor being stated in the order and entered of record, and no such prosecution shall be discontinued or abandoned in any other manner. Such a dismissal is a bar to another prosecution for the same offense if it is a simple or serious misdemeanor; but it is not a bar if the offense charged is a felony or an aggravated misdemeanor.

2.33(2) Speedy trial. It is the public policy of the state of Iowa that criminal prosecutions be concluded at the earliest possible time consistent with a fair trial to both parties. Applications for dismissals under this rule may be made by the prosecuting attorney or the defendant or by the court on its own motion.

a. When an adult is arrested for the commission of an offense, or, in the case of a minor, when the juvenile court enters an order waiving jurisdiction pursuant to Iowa Code section 232.45, and an indictment is not found against the defendant within 45 days, the court must order the prosecution to be dismissed, unless good cause to the contrary is shown. For purposes of this rule, the 45-day period commences for an adult only after the defendant has been taken before a magistrate for an initial appearance or a waiver of initial appearance is filed.

1 **b.** The defendant must be brought to trial within 90 days after indictment is
2 found or the court must order the indictment to be dismissed unless good
3 cause to the contrary is shown.

4 **c.** All criminal cases must be brought to trial within one year after the
5 defendant's initial arraignment pursuant to rule 2.8 unless an extension is
6 granted by the court, upon a showing of good cause.

7 **d.** The defendant personally or through defense counsel may waive the
8 deadlines in (a) and (b) above. A waiver of speedy trial operates to waive both
9 deadlines. The deadline in (c) may be waived only by the defendant personally
10 and on the record or by the filing of a written waiver that substantially
11 complies with the rule 2.37—Form 9: *Waiver of Speedy Trial*.

12 **e.** If the court directs the prosecution to be dismissed, the defendant, if in
13 custody, must be discharged, or the defendant's bail, if any, exonerated.

14 **2.33(3) Change of venue after jury selection commenced.** Whenever a change
15 of venue is granted pursuant to Iowa Code section 803.2(2), the defendant may
16 be brought to trial within 90 days of the grant of the change of venue,
17 notwithstanding rule 2.33(2)(b).
18

19 **Rule 2.34 Reserved.**

20 **COMMENT:** The substance of former rule 2.34 has been moved to rule 2.11.
21

22 **Rule 2.35 Reserved.**

23 **COMMENT:** Rule 2.35 has been removed as unnecessary.
24

25 **Rule 2.36 Forms for search and arrest warrants.**

26 **COMMENT:** No changes have been made to existing forms.
27

28 **Rule 2.37 Forms other than warrants.**

29 **COMMENT:** No changes have been made to forms 1–7.

Rule 2.37—Form 8: Waiver of Initial Appearance for Indictable Offense

In the Iowa District Court for _____ County <i>County where you are filing this Waiver</i>	
State of Iowa vs. Defendant	Case no. _____ Waiver of Initial Appearance for Indictable Offense <small>If you need assistance to participate in court due to a disability, call the disability coordinator (information at www.iowacourts.gov/Administration/Directories/ADA_Access/). Persons who are hearing or speech impaired may call Relay Iowa TTY (1-800-735-2942). Disability coordinators cannot provide legal advice.</small>

1. I certify the following: *Read, complete, and check each item if you agree.*
- A. ☐ I understand a preliminary complaint has been filed in my name charging me with an indictable offense.
 - B. ☐ I understand I am required to appear before a magistrate within 24 hours of my arrest or at a time specified on my citation to appear pursuant to Iowa Rules of Criminal Procedure 2.2(2) and 2.2(3) for an initial appearance.
 - C. ☐ I understand at my initial appearance the Court would advise me of the following:
 - ☐ The allegations of the complaint and provide me with a copy of the complaint.
 - ☐ My right to retain counsel or have counsel appointed for me if I am determined to be unable to afford an attorney according to certain guidelines the Court must follow.
 - ☐ My right to obtain a review of my bond conditions and how I may secure pretrial release from custody.
 - ☐ That I am not required to make any statements, but that if I do make statements, they may be used against me.
 - ☐ My right to a preliminary hearing as provided by Iowa Rule of Criminal Procedure 2.2(4).
 - D. ☐ I understand it is my right to have an initial appearance and I can either enforce that right or waive it (give it up).
 - E. ☐ I hereby waive (give up) my right to appear for an initial appearance and ask the court set the next appropriate court dates.
 - F. ☐ This waiver is knowingly, voluntarily, and intelligently made with a full understanding of its meaning and after discussion with and advice of my attorney.

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** Whether filing electronically or in paper, you must **handwrite** your signature on this form. If you are filing electronically, scan the form after signing it and then file electronically.*

Rule 2.37—Form 9: Waiver of Speedy Trial

In the Iowa District Court for _____ County <i>County where you are filing this Waiver</i>	
State of Iowa vs. Defendant	Case no. _____ Waiver of Speedy Trial <small>If you need assistance to participate in court due to a disability, call the disability coordinator (information at www.iowacourts.gov/Administration/Directories/ADA_Access/). Persons who are hearing or speech impaired may call Relay Iowa TTY (1-800-735-2942). Disability coordinators cannot provide legal advice.</small>

1. I certify the following: *Read, complete, and check each item if you agree.*
- A. ☐ I understand that I have the right to be brought to trial within one year of the date of my initial arraignment and that if the State fails to do so, the case against me could be permanently dismissed. This right is called the Right to a Speedy Trial (One Year Rule) and it is set out in Iowa Rule of Criminal Procedure 2.33(2)(c).
 - B. ☐ I understand that this is my right and I can either enforce it or waive it (give it up).
 - C. ☐ I have already knowingly, voluntarily, and intelligently waived (given up) my right to have the case tried within 90 days of the date that formal charges were filed against me.
 - D. ☐ I hereby waive (give up) the right to be tried within one year of my initial arraignment and I agree that the State may delay bringing me to trial beyond the one year deadline. I further assert that there is good cause to delay my trial beyond the one year deadline and I ask the Court to delay the case and to find good cause for delaying the case. I agree I will not attempt to challenge the charges against me in this case in the future based on a claim that my Right to Speedy Trial was violated under either the 90 Day Rule or the One Year Rule.
 - E. ☐ I understand that I may eventually be brought to trial on the charges and that if that happens, I will not be allowed to challenge the charges based on a claim that my Right to Speedy Trial has been violated.
 - F. ☐ This waiver is knowingly, voluntarily, and intelligently made with a full understanding of its meaning and after discussion with and advice of my attorney.

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** Whether filing electronically or in paper, you must **handwrite** your signature on this form. If you are filing electronically, scan the form after signing it and then file electronically.*

SIMPLE MISDEMEANORS

Rule 2.51 Scope of rules and definitions.

Rule 2.51(1) Scope. The rules set forth in this section shall apply to trials, related proceedings, and appeals from conviction of simple misdemeanors.

Rule 2.51(2) Definition. For purposes of this section, “magistrate” includes judicial magistrates, district associate judges, and district judges.

Rule 2.52 Applicability of indictable offense rules. Procedures not provided for herein shall be governed by the provisions of the rules or statutes governing indictable offenses that are by their nature applicable to simple misdemeanor prosecutions.

Rule 2.53 To whom tried.

2.53(1) Generally. Judicial magistrates and district associate judges may hear, try, and determine simple misdemeanors.

2.53(2) Transfer. District judges may transfer any simple misdemeanors pending before them to a judicial magistrate or district associate judge.

2.53(3) Joint trial. When a simple misdemeanor arises out of the same transaction or occurrence as an indictable offense, preference should be given to consolidating the matters for trial.

2.53(4) Jury trial. A simple misdemeanor is not tried to a jury unless the defendant timely requests a jury trial.

Rule 2.54 The complaint. Prosecutions for simple misdemeanors shall be initiated by sworn complaint.

Rule 2.55 Contents of the complaint. The complaint shall contain:

2.55(1) The name of the county and of the court where the complaint is filed.

2.55(2) The name of the accused if known, and if not known, designation of the accused by any name by which the accused may be identified.

2.55(3) The name of the offense and the statutory provision or provisions alleged to have been violated, a brief statement of the acts or omissions by which the offense is alleged to have been committed, and a brief statement of the time and place of the offense if known.

Rule 2.56 Approval of complaint. The complaint shall be approved by the magistrate upon a determination of probable cause.

Rule 2.57 Arrest warrant. Immediately upon approving the complaint, the magistrate may issue an arrest warrant.

Rule 2.58 Appearance of defendant.

2.58(1) *Arrest and appearance.* An officer making an arrest with or without a warrant shall take the arrested person before a magistrate either personally or by interactive audiovisual system as provided by rule 2.27 within 24 hours unless no magistrate is available and in all events within 48 hours.

2.58(2) *Arrest without a warrant.* When a person is arrested without a warrant, a complaint shall be filed immediately.

2.58(3) *Determination of probable cause.* If the defendant received a citation or was arrested without a warrant, the magistrate shall, prior to further proceedings in the case, make a determination from the complaint or affidavits filed with the complaint whether there is probable cause to believe that an offense has been committed and that the defendant has committed it. The magistrate's decision in this regard shall be entered in the record.

2.58(4) *Prosecution of corporations.* A corporation may be summoned as provided in Iowa Code chapter 807.

Rule 2.59 Verification of complaint. At the defendant's initial appearance, the magistrate shall inform the defendant of the complaint and ensure the defendant receives a copy of it. The defendant must inform the magistrate whether the name and address shown in the complaint is the defendant's true and correct name. If the defendant gives no other name, the defendant is thereafter precluded from objecting to the complaint on the ground of being improperly named.

Rule 2.60 Advice of rights at initial appearance. At the defendant's initial appearance, the magistrate shall inform the defendant of the following:

2.60(1) The defendant's right to retain counsel.

2.60(2) The defendant's right to request the appointment of counsel if the defendant faces the possibility of incarceration and is unable to obtain counsel by reason of indigency.

2.60(3) The circumstances under which the defendant may secure pretrial release.

2.60(4) The defendant's right to obtain review of any conditions imposed on the defendant's release.

2.60(5) That the defendant is not required to make a statement and that any statement made by the defendant may be used against the defendant.

Rule 2.61 Appointment of counsel. In cases where the defendant faces the possibility of incarceration, the magistrate shall appoint counsel for an indigent defendant in accordance with procedures established under rule 2.2(3). The magistrate shall allow the defendant reasonable time and opportunity to consult with counsel if the defendant expresses a desire to do so.

Rule 2.62 Bail. Admission to bail shall be as provided for in Iowa Code chapter 811. Upon proper application, a district court judge or district associate judge is authorized to review and amend the conditions of bail previously imposed. There shall be no more than one review except upon changed conditions.

Rule 2.63 Plea.

2.63(1) Plea. At the defendant's initial appearance, the defendant shall be required to enter a plea to the complaint. Permissible pleas include those allowed when the defendant is indicted as set forth in rule 2.8.

2.63(2) Waiver of initial appearance. Unless otherwise ordered by the court, a defendant may waive initial appearance by executing and filing a written waiver that substantially complies with the rule 2.76—Form 5: *Waiver of Initial Appearance for Simple Misdemeanors*. Thereafter, the date of initial appearance is deemed the date the waiver was filed. A defendant may also waive the initial appearance by filing a written guilty plea or written plea agreement.

Rule 2.64 Trial.

2.64(1) Upon a plea other than guilty, the magistrate shall set a trial date, which shall be at least fifteen days after the plea is entered.

2.64(2) The magistrate shall advise the defendant of the following:

a. The trial will be without a jury unless the defendant makes a demand for jury trial within ten days following the plea of not guilty.

b. Failure to make a jury demand in the manner prescribed herein constitutes a waiver of jury.

c. If a demand for jury trial is made, the action shall be tried by a jury of six persons.

d. If the defendant so requests, the magistrate may set a trial date for a nonjury trial less than fifteen days after a plea other than guilty is entered; however, the magistrate shall notify the defendant that such a request constitutes a waiver of jury trial.

Rule 2.65 Pretrial matters. When the defendant has requested a jury trial, the magistrate may direct that certain matters be raised and addressed prior to the start of the jury trial.

Rule 2.66 Joint trials.

2.66(1) *Multiple complaints.* Two or more complaints against one defendant may be tried jointly.

2.66(2) *Multiple defendants.* Two or more defendants may be tried together if they are alleged to have participated in the same act or the same transaction or occurrence out of which the offense or offenses arose.

2.66(3) *No joinder if prejudice.* Complaints or defendants shall not be jointly tried if the court finds that prejudice will result to a party.

2.66(4) *Separate judgments.* Jointly tried complaints or defendants shall be adjudged separately.

Rule 2.67 Forfeiture of collateral in lieu of appearance. In the event a simple misdemeanor is charged under the uniform citation and complaint as described in Iowa Code section 805.6, and the defendant either has submitted an unsecured appearance bond as provided in that section or has submitted bail as provided in Iowa Code section 805.9(3), the court or the clerk of the district court may enter a conviction pursuant to the defendant's written

1 appearance and may enter a judgment of forfeiture of the collateral in
2 satisfaction of the judgment and sentence; provided that if the defendant
3 submitted unsecured appearance bond or if bail remains uncollected,
4 execution may issue upon the judgment of the court at any time after entry of
5 the judgment.

6
7 **Rule 2.68 Change of venue.** A change of venue may be applied for and
8 accomplished in the manner prescribed in rule 2.11(10).

9
10 **Rule 2.69 Selection of jury; trial.**

11 **2.69(1) Selection of panel.** If a jury trial is demanded, the magistrate shall
12 notify the clerk of the district court of the time and place of trial. The clerk
13 shall thereupon select by lot fourteen names from the district court jury pool,
14 which will constitute the jury panel for voir dire. The clerk shall notify these
15 jurors of the time and place for trial.

16 **2.69(2) Incorporation of rule 2.18.** Except where inconsistent with this rule,
17 rule 2.18 shall apply to juries in simple misdemeanor cases.

18 **2.69(3) Alternate jurors.** No alternate jurors shall be chosen.

19 **2.69(4) Jury of six.** The jury shall be comprised of six jurors.

20 **2.69(5) Trial.** The court shall conduct the trial in the manner of indictable
21 cases in accordance with rule 2.19.

22 **2.69(6) Record.**

23 *a. Generally.* Trial of a simple misdemeanor offense shall not be reported;
24 however, the magistrate may require electronic reporting upon advance notice
25 to both parties. If the proceedings are not reported electronically, the
26 magistrate shall make minutes of the testimony of each witness.

27 *b. Stenographic Reporting.* A party may provide a reporter at such party's
28 expense upon notice to all parties and with the magistrate's approval.

29 *c. Transcript of electronic recording.* If the trial has been reported
30 electronically, the recording shall be retained by the court. Upon request, the
31 recording shall be transcribed by a person designated by the court and a copy
32 provided upon payment of actual cost or to an indigent defendant at state
33 expense.

Rule 2.70 Judgment.

2.70(1) When the defendant is acquitted, the defendant must be immediately discharged.

2.70(2) When the defendant pleads guilty or is convicted, the magistrate may render judgment as allowed under the law. If the judgment and costs are not fully and immediately satisfied, the magistrate shall so indicate on the judgment.

Rule 2.71 Prior convictions. If the complaint alleges one or more prior convictions that subject the defendant to an increased sentence, the defendant shall have the opportunity in open court to affirm or deny that the defendant is the person previously convicted, or that the defendant was not represented by counsel and did not waive counsel when previously convicted.

2.71(1) Prior to accepting any affirmation by the defendant, the court shall determine that a factual basis exists for the affirmation and shall have a colloquy with the defendant as provided in rule 2.19(8). However, such colloquy shall omit reference to a waiver of trial by jury unless the defendant timely requested a jury.

2.71(2) If the defendant denies being the person previously convicted, sentence shall be postponed for such time as to permit a trial on the matter.

2.71(3) If jury trial was demanded, the court may, on the issue of identity, reconvene the jury that heard the current offense or dismiss that jury and submit the issue to another jury to be later impaneled. Other objections shall be determined by the court.

Rule 2.72 Appeals.

2.72(1) *Generally.* An appeal may be taken by the plaintiff only upon a finding of invalidity of an ordinance or statute. In all other cases, an appeal may only be taken by the defendant and only upon a judgment of conviction. Execution of the judgment shall be stayed upon posting of an appeal bond in the sum specified in the judgment.

2.72(2) *Notice of appeal.* A party takes an appeal by filing with the clerk of the district court a written notice of appeal not later than ten days after judgment is rendered. Payment of a fine or service of a sentence of imprisonment does not waive the right to appeal nor render the appeal moot.

1 **2.72(3) Record.** When an appeal is taken, the magistrate shall promptly
2 forward to the appropriate district court clerk a copy of the magistrate's
3 minutes of the witnesses' testimony along with the exhibits. Within ten days
4 after an appeal is taken, unless extended by order of a district judge or district
5 associate judge, any transcript or electronic recording of the official report shall
6 be filed by the magistrate unless it is already on file.

7 **2.72(4) Procedure.**

8 a. Within fourteen days after taking the appeal, the appellant shall file and
9 serve a brief in support of the appeal. The brief shall include statements of the
10 specific issues presented for review and the precise relief requested.

11 b. Within ten days after service of the appellant's brief, the appellee may file
12 and serve a responding brief.

13 c. Either party may request, at the end of the party's brief, permission to be
14 heard in oral argument.

15 d. Within thirty days after the filing, or expiration of time for filing, of the
16 appellee's brief, the appeal shall be submitted to the court on the record and
17 any briefs without oral argument, unless otherwise ordered by the court.

18 e. If the court, on its own motion or motion of a party, finds the record to be
19 inadequate, it may order the presentation of further evidence.

20 f. If the original action was tried by a district judge, the appeal shall be
21 decided by a different district judge. If the original action was tried by a district
22 associate judge, the appeal shall be decided by a district judge or a different
23 district associate judge. If the original action was tried by a judicial magistrate,
24 the appeal shall be decided by a district judge or district associate judge.

25 g. Findings of fact in the original action shall be binding on the judge
26 deciding the appeal if they are supported by substantial evidence. The judge
27 deciding the appeal may affirm, reverse and enter judgment as if the case were
28 being originally tried, or enter any judgment that is just under the
29 circumstances.

30 **2.72(5) Counsel.** In appropriate cases, the magistrate shall appoint counsel
31 on appeal.

32 **2.72(6) Review by supreme court.** Parties may not seek discretionary review
33 by the supreme court until an appeal to the district court has been completed.
34 After the district court determines the appeal, the defendant may apply for
35 discretionary review pursuant to Iowa Code section 814.6(2)(d), and the
36 plaintiff may apply for discretionary review pursuant to Iowa Code section

814.5(2)(d). Procedure on discretionary review shall be as prescribed in Iowa R. App. P. 6.106.

Rule 2.73 Motion for a new trial.

2.73(1) *Generally.* The magistrate, on motion of a defendant, may grant a new trial on the grounds set forth in rule 2.24(2).

2.73(2) *Newly discovered evidence.* A motion for a new trial based on newly discovered evidence must be made within six months after the final judgment.

2.73(3) *Other grounds.* A motion for a new trial based on any other grounds shall be made within seven days after a finding of guilty or within such further time as the magistrate may fix during the seven-day period.

Rule 2.74 Correction or reduction of sentence.

2.74(1) The magistrate may correct an illegal sentence at any time. The magistrate may correct a sentence imposed in an illegal manner or may reduce a sentence:

a. Within ten days after the sentence is imposed.

b. Within ten days after the receipt by the magistrate of a mandate issued upon affirmance of the judgment or dismissal of the appeal.

c. Within ten days after entry of any order or judgment of the appellate court denying review of, or having the effect of upholding, a judgment of conviction.

2.74(2) The magistrate may also reduce a sentence upon revocation of probation as provided by law.

Rule 2.75 Reserved.

Rule 2.76 Forms

COMMENT: No changes have been made to forms 1–4.

Rule 2.76—Form 5: *Waiver of Initial Appearance for Simple Misdemeanor and Entry of Plea*

In the Iowa District Court for _____ County <i>County where you are filing this Waiver</i>	
State of Iowa vs. Defendant	Case no. _____ Waiver of Initial Appearance for Simple Misdemeanor and Entry of Plea <small>If you need assistance to participate in court due to a disability, call the disability coordinator (information at www.iowacourts.gov/Administration/Directories/ADA_Access/). Persons who are hearing or speech impaired may call Relay Iowa TTY (1-800-735-2942). Disability coordinators cannot provide legal advice.</small>

1. Waiver of initial appearance

I certify the following: *Read, complete, and check each item if you agree.*

- A. ☐ I understand a preliminary complaint or citation has been filed in my name charging me with a public offense.
- B. ☐ I understand I am required to appear before a magistrate within 24 hours of my arrest or at a time specified on my citation to appear pursuant to Iowa Rule of Criminal Procedure 2.58(1) for an initial appearance.
- C. ☐ I understand at my initial appearance the Court would advise me of the following:
 - ☐ The allegations of the complaint and provide me with a copy of the complaint.
 - ☐ My right to retain counsel or have counsel appointed for me if I face the possibility of incarceration and am unable to obtain counsel by reason of indigency.
 - ☐ My right to obtain a review of my bond conditions and how I may secure pretrial release from custody.
 - ☐ That I am not required to make any statements, but that if I do make statements, they may be used against me.
- D. ☐ I understand that I will be required to enter a plea and if my plea is "not guilty," a trial date will be set at least 15 days after my plea has been entered.
- E. ☐ I understand that unless I demand a jury trial within 10 days of my initial appearance, the trial will be without a jury.
- F. ☐ I understand that if a jury trial is demanded, the case will be tried by a jury consisting of six persons.
- G. ☐ I understand it is my right to have an initial appearance and I can either enforce that right or waive it (give it up).
- H. ☐ I hereby waive (give up) my right to appear for an initial appearance and ask the court set the next appropriate court dates.
- I. ☐ This waiver is knowingly, voluntarily, and intelligently made with a full understanding of its meaning and after discussion with and advice of my attorney.

Continued on next page

